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# Introduction to the Regulations of the Bengal Code 1888

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# INTRODUCTION

TO THE

# REGULATIONS

OF

# THE BENGAL CODE.

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## CHAPTER I.

### THE ACQUISITION OF TERRITORIAL SOVEREIGNTY BY THE ENGLISH IN THE PRESIDENCY OF BENGAL.

§ 1.—On the 12th August 1765, Sháh Alam, the titular[1] Emperor of Delhi, made a perpetual grant to the East India Company of the Díwání of the three provinces of Bengal, Bahár and Orissa. The *farmán*, or patent, runs as follows:—"We have granted them the Díwání of Bengal, Bahár and Orissa, from the beginning of the Fasl-i-rabíî (spring harvest) of the

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[1]Alí Gohur, who took the title of *Sháh Alam the Second* on being recognized as Emperor by Ahmed Sháh Durání after the battle of Pánipat, was the eldest son of *Alamgír the Second*, who was raised to the throne (A.D. 1754) by Ghází-ud-dín, the Commander-in-Chief, after he had deposed and blinded Ahmed Sháh. Alamgír was assassinated under the orders of the same Ghází-ud-dín (November, A.D. 1759) to prevent his combination with Ahmed Sháh Durání, who was then advancing to invade India for the fourth time. Alí Gohur was then absent in Bengal, and Ghází-ud-dín raised to the throne another youth of the royal family, who was never generally acknowledged, as Ghází-ud-dín almost immediately fled from Delhi, before the advance of Sedásheo Bháo and the Marattas, and took refuge in the Ját country. Ahmed Sháh Durán having destroyed the power of the Marattas in the battle of Pánipat (7th January 1761) returned to Kabul without attempting to profit by his victory, and did not afterwards interfere in the affairs of India. His recognition of Alí Gohur as Emperor under the title of Sháh Alam may indeed be regarded as an acknowledgment that

Bengal year 1172, as a free gift and *altamgha*[1] without the association of any other persons, and with an exemption from the payment of the customs of the Díwání, which used to be paid by the Court. It is requisite that the said Company engage to be security for the sum of twenty-six lákhs[2] of rupees a year, for our royal revenue, which sum has been appointed from the Nawáb Nadjam-ud-Daulah Bahádur, and regularly remit the same to the royal Sarkár (Government); and in this case, as the said Company are obliged to keep up a large army for the protection of the provinces of Bengal, &c., we have granted to them whatsoever may remain out of the revenues of the said provinces, after remitting the sum of twenty-six lákhs of rupees to the royal Sarkár and providing for the expenses of the Nizámat".[3]

§ 2.—The meaning of the term "*Díwání*" has been often misunderstood.[4] "*Díwání*" means literally "a royal court," a council of state," "a tribunal of revenue or justice," "a minister", "a chief officer of state;" and, under the Mahomadan Government, it was applied especially to the head financial Minister, whether of the state or of a province, who was charged with the collection of the revenue, and invested with extensive judicial powers in all civil and financial cases. It was the duty of the *Díwán* of a province to remit the revenue when collected to the Imperial Treasury. "*Díwání*" means "the office, jurisdiction, and emoluments of a Díwán," and the

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the Mogul sovereignty was still in existence; but most historians consider this sovereignty to have terminated with the life of Alamgir II —See *Elphinstone's History of India*, page 665, and *Mill's History of British India*, vol. ii, p. 478. Mr. Mill, speaking of *Sháh Alam the Second*, says, that he "never possessed a sufficient degree of power to consider himself for one moment as master of the throne." He was, in fact, till his death a mere puppet in the hands of whatever power had the ascendency for the time. His eyes were put out by Ghulám Kadir in 1788. He was again restored to his nominal throne by Sindia. After the battle of Delhi in September 1803, he put himself under British protection; and from this date the Mogul sovereignty must certainly be held to have finally terminated.

[1] "Royal grant," so called from two Turkish words signifying "red" and "seal," such grants having been formerly sealed with a red seal.

[2] A lákh is one hundred thousand. Assuming the rupee to be worth two shillings, twenty-six lákhs of rupees are equivalent to £260,000. The grant was therefore subject to a considerable annual payment by the grantee to the grantor.

[3] *Aitchison's Treaties*, vol. i, p. 61.

[4] For example, Lord Mahon (History of England) speaks of "a Díwání or public deed." The *deed* by which the Díwání was granted was called a *farmán*.

grant of the Díwání was a grant of the right to collect the revenue of Bengal, Bahár and Orissa, and to exercise judicial powers in all civil and financial causes arising in those provinces.[1] The *farmán*, which granted the Díwání to the East India Company, was however something more than a grant of the right to collect the revenue of the three provinces and to exercise jurisdiction in civil and financial or revenue cases. It was a perpetual grant to the Company of the revenue when collected, subject to the payment of twenty-six lákhs to the Emperor and to defraying the expenses of the Nizámat.

§ 3.—In order to understand this latter condition, we must understand what is meant by the *Nizámat*. Under the Mahomadan Government, the *Názim* was the chief officer charged with the administration of Criminal Law and the Police, just as the *Díwán* was charged with the administration of Civil Law and the collection of the revenue. The term "*Nizámat*" denoted "the office, duties of the Názim, the administration of Police and Criminal Law." In the palmy days of the Mogul Empire, it was usual to conduct the administration of the more distant *Súbahs*, or provinces, through a Viceroy or Governor called a *Súbahdár*, who was occasionally a relation of the Emperor, and to whom were entrusted not infrequently both the *Díwání* and the *Nizámat*. As *Díwán*, he collected and remitted the revenue and administered civil justice. As *Náib* or *Nawáb*[2] *Názim*,—*i.e.*, Deputy of the Minister for the administration of criminal justice and police, who was near the person of the Emperor, he administered criminal justice and managed the Police of his province. The *Súbahdár*[3] of Bengal, Bahár and Orissa formerly exercised these double functions. When the Díwání was granted in perpetuity to the English Company he still retained the Nizámat, still continued to be the Nawáb Názim, the Deputy of the Emperor's Názim, for the administration of criminal justice and police in the provinces of Bengal, Bahár and Orissa ; and

[1] See *Wilson's Glossary—Title* DIWAN. The *Committee of Circuit*, in their proceedings of the 20th August 1772, say—"The Díwání may be considered as composed of two branches : 1*st*, the collection of the revenue ; 2*nd*, the administration of justice in civil cases." See *Harington's Analysis*, vol. ii, p. 25.

[2] *Nawáb* is the honorific plural of *Náib*, which means "a deputy."

[3] The office of Súbahdár was not hereditary, nor even granted for life ; but, in the weakness and decline of the Mogul Empire, the Súbahdárs became in many instances too powerful to be removed ; and a son or other relation being on the spot and grasping the reins of power often succeeded with or without investiture by the Emperor.

it was for the expenses of the *Nizámat*, or office of *Názim*, that the Company were required to provide out of the revenue of Bengal, Bahár and Orissa, when the Díwání of these three provinces was granted to them by the Emperor's *farmán* on the 12th August 1765.[1]

[1] The *Subahdár* of Bengal, Bahár and Orissa usually resided at Múrshedabád. When, on the grant of the Díwání to the Company, the Nizámat was still left in the hands of *Nadjam-ud-Daulah*, he was styled with special reference to this office *the Naváb Názim*, and the same title continued to be given to the members of the family who succeeded him. As the rights of the *Nawáb Názim of Múrshedabád* have been frequently discussed, the following additional facts may be usefully mentioned. In accordance with the condition in the Emperor's *farmán*, that a sufficient allowance should be made out of the revenues of the three provinces to support the expenses of the Nizámat, an agreement was concluded on the 30th September 1765 with the Nawáb Nadjam-ud-Daulah (son of Mír Jafier, who died in January 1765), by which he was to receive the annual sum of Sicca Rs. 53,86,131 as an adequate allowance for the support of the Nizámat. Of this sum, Rs. 17,78,854 was for the Nawáb Názim's household expenses, servants, &c., and Rs. 36,07,277 for the maintenance of horse, sipáhís, peons, &c., for the support of his dignity (*Aitchison's Treaties*, vol. i, p. 65). *Nadjam-ud-Daulah* died on the 8th May 1766, and his brother *Syeff-ud-Daulah* was elevated by the Company to the vacant office. By an agreement concluded with him on the 19th May 1766, he was to receive the reduced annual sum of Rs. 41,86,131, *viz.*, Rs. 17,78,854 for his household, and Rs. 24,07,277 for sipáhís, peons, &c. (*Aitchison's Treaties*, vol. i, p. 67). *Syeff-ud-Daulah* died of small-pox on the 10th March 1770, and his brother *Mobarek-ud-Daulah*, a minor, was made Nawáb Názim. By an agreement concluded with him on the 21st March of the same year, the allowance was still further reduced to Rs. 31,81,991, *viz.*, Rs. 15,81,991 for the household, and Rs. 16,00,000 for sipáhís, peons, &c. (*Aitchison's Treaties*, vol. i., p. 9). The Court of Directors, in their general letter on the 10th April 1771, directed the whole allowance to be still further reduced to sixteen lákhs during the minority of the Nawáb. No treaties or agreements were concluded after 1770 with any member of the family; but the stipend of sixteen lákhs has ever since continued to be appropriated to the benefit of the Nawáb Názim and the members of the family. In the Dispatch No. 30, dated 17th June 1864, it was intimated that the Secretary of State perceived with satisfaction that the Government of India had no intention of disturbing existing arrangements for the pecuniary provision of the Nawáb Názim and his family, and the maintenance of the titular dignity of His Highness, it being obvious that they could not be interfered with or altered, during good conduct, without a violation of the spirit, at least, of the assurances which had been given to him by the British Government and a departure from the whole tenor of the transactions with him during a long course of years.

Whatever questions may be raised as to the appropriation of the sixteen lákhs hitherto paid to the Nizámat family—and in dealing with these questions, the maxim *cujus est dare ejus est disponere* may well be borne in mind—it is clear that no claim can be founded upon the Emperor's *farmán* or upon the agreements concluded with *Nadjam-ud-*

§ 4.—But there is another and a very important point of view in which the Emperor's *farmán* may be considered, and this is with reference to the words "as the said Company are obliged to keep up a large army for the protection of the provinces of Bengal, &c." These words conceded to the Company authority to undertake the military defence of Bengal, Bahár and Orissa, to exercise military power, and so to assume one of the most important prerogatives of sovereignty. In the agreement of the 30th September 1765, concluded with *Nadjam-ud-Daulah*, provision was made for the maintenance of horse, sipáhís, peons, &c., for the support of his dignity only; but not for military purposes. In the agreement of the 19th May 1766, concluded with *Syeff-ud-Daulah*, he agreed that the protecting the provinces of Bengal, Bahár and Orissa, and the force sufficient for that purpose, he entirely left to the "discretion and good management" of the Company. A clause exactly similar is to be found in the agreement of the 21st March 1770, concluded with *Mobarek-ud-Daulah*. It will thus appear that the grant of the *Díwání* in 1765 was a cession to the East India Company of the military government of the three provinces of Bengal, Bahár and Orissa, of the right to administer civil justice, and of the complete control of the finances, subject to a payment of 26 lákhs to the Emperor and to providing for the expenses of administering criminal justice, and the

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*Daulah*, *Syeff-ud-Daulah*, and *Mobarek-ud-Daulah*. None of these agreements contain words of inheritance, and they were clearly concluded with the individuals personally, and were intended to operate during their lifetime only. It was never asserted at the time that the first or any subsequent agreement ought to have had operation after the lifetime of the individual with whom it was made—*contemporanea expositio est optima et fortissima in lege*—and the fact, that the terms of each agreement differed, is conclusive to show that the whole question was regarded as open on the demise of each Nawáb. The office of *Súbahdár* was not an hereditary office, and it can scarcely be argued that, when shorn of the greater part of its strength, it could acquire a quality which did not belong to it in its palmiest days. The condition in the *farmán* was to provide for the expenses, not of the *Názim*, but of the *Nizámat*, *i.e.*, of the administration of criminal justice and of the police The mode in which these expenses should be provided for, was not prescribed; and it cannot be contended that the Company were bound to do otherwise than use their own discretion in a matter thus clearly left to their discretion, or to make an office hereditary which had not been so by the custom of the country. When the complete territorial sovereignty passed into the hands of the English they had undoubtedly the same right, which the Mogul Emperor formerly had, to provide for the Nizámat, or administration

maintenance of the police. It was in fact, though not in name, a cession of the sovereignty of these provinces, seeing that it was a cession of all he essentials of sovereignty.

§ 5.—It will here be convenient to take a brief retrospect of the rise of the power of the East India Company in Bengal, and to see in what position they were to exercise these rights of sovereignty thus conferred upon them in 1765. The first factory of the English in India was established at Surat under the authority of a *farmán* of *Jehangír*, dated 11th January 1613. In 1634 the Emperor *Sháh Jehán* granted a *farmán* permitting the ships of the Company to enter the Ganges, or rather to resort to the port of Piplí at the entrance of the western branch of that river; and in 1642 a factory was accordingly established at Balasore. Ten years afterwards, in 1652, Mr. Gabriel Boughton, a surgeon of the Company, having procured the imperial favour by curing certain members of the emperor's family, obtained permission for unlimited trade in Bengal, free of customs, but subject to an annual payment of Rs. 3,000. *Shujá*, the second son of *Sháh Jehán*, having been appointed Súbahdár of Bengal, took up his residence at Rájmahal; and Mr. Boughton, having come to pay his respects to him, was fortunate enough to make another successful cure, in consequence of which he obtained the prince's favour and permission for the English to establish a factory at Húghlí, where the Portuguese had previously erected a well-fortified settlement. *Shujá*, who was favourable to the English, governed Bengal until 1660, when, upon the death of *Sháh Jehán* in 1657, having taken up arms with a view to obtain the throne, and being defeated by Aurangzíb's generals, he fled to Arakán and was there murdered. *Sháista Khan*, maternal uncle of Aurangzíb, was the next *Súbahdár* of Bengal. He treated the English with very much less favour. He exacted a duty of 3½ per cent. on their merchandize, and his officers extorted

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of criminal justice and police, in whatever manner they deemed fit. When this event happened, they made provision for administering criminal justice and for the police of the country otherwise than through a Nawáb Názim. This was done with the consent of the person who was Nawáb Názim at the time, and those who were afterwards permitted to enjoy the titular dignity and the pension allowed them as descendants of a former *Súbahdár* (such a pension being in conformity with the previous custom of the country) never for a moment pretended to have any claim to the authority or to exercise the functions of the Nizámat.

considerable sums from their factors. A hostile spirit was thus created; and a quarrel between three English sailors and the native police at Haghlí brought on actual hostilities, in consequence of which, on the 20th December 1686, Job Charnock abandoned Húghlí and dropped down the river of the same name to the little village of *Sútanatí* (*Chuttanutty*) which afterwards became the site of Calcutta. From *Sútanatí* he was forced to retire to *Injellí* at the mouth of the river Húghlí, and the English factories including those at *Kasimbazár* and *Patna* were taken and plundered. Captain Heath now arrived with two ships from England, and, having plundered Balasore and made an unsuccessful attempt upon Chittagong, he took the Company's servants and effects on board and landed them at Madras. Bengal was thus wholly abandoned.

§ 6.—The Emperor Aurangzíb had been greatly exasperated at the hostilities of the English, and had at one time given orders to expel them entirely from his dominions; but the loss of their commerce was felt, and the English ships were able to prevent the pilgrimage of pious Mahomadans by sea to Mecca. He was therefore induced to listen to two commissioners who were sent from Bombay, and a reconciliation was effected, in consequence of which he directed the *Súbahdár* of Bengal to invite Charnock to return to Bengal. After a promise of compensation from the emperor for the goods that had been plundered, Charnock returned to *Sútanatí* on the 24th August 1690 and laid the foundation of Calcutta.[1] Eight years after, in 1698, permission was obtained from *Azím-us-Sháh*, grandson of *Aurangzíb* and *Súbahdár* of Bengal, Bahár and Orissa, to purchase from the *zemindárs* the *talukdárí* right of Calcutta and the adjacent villages of *Sútanatí* and *Gobindpúr*, subject to the annual payment of Rs. 1,195. In the year 1717 the emperor *Farokhsír*, out of gratitude at being cured of a disease by Mr. Hamilton, a surgeon of the Company, granted to the English the privilege of free trade, and also permission to purchase the *talukdárí* right of thirty-eight more villages adjacent to the three purchased in 1698. This purchase was not however

[1]Barrackpúr is called by the natives *Achanuk* after Job Charnock. Calcutta is derived from *Kali ghát*, *i.e.*, the landing place, place where people bathe, sacred to the goddess *Kali*, which is within the city on the bank of the river Húghlí. *Alinagur* is another name by which Calcutta was formerly known.

effected, as the then *Súbahdár* of Bengal, *Jâfier Khan* (*Múrshed*[1] *Kúlí Khan*), not being favourably disposed to the English, would not allow the *zemindárs* to make the sale. *Jâfier Khan* died in 1725 and was succeeded by his son-in-law *Sujáh-ud-din*. On his death, his son *Serferaj Khan* took possession of the *Súbahdárí* or viceroyalty, but was killed in battle with *Aliverdí Khan*, who, having obtained a *sanad*, or grant, of the *Súbahdárí* from the Emperor, marched with an army to assert his rights. Aliverdí Khan[2] was *Súbahdár* till his death on the 9th April 1756, when he was succeeded by his grandson *Seráj-ud-daulah*, who being exasperated with the English, because Mr. Drake, the Governor of Calcutta, refused to surrender one Kishan Das, son of Raja Rajbullubh, Governor of Dacca, marched to attack Calcutta and captured Fort William on the 21st June 1756. One hundred and forty-six English were taken prisoners, and with the exception of twenty-three, all perished miserably in the Black Hole on the night of that day. Colonel Clive and Admiral Watson, being sent from Madras to retrieve these disasters, recovered Calcutta on the 2nd January 1757.[3] On the 9th February 1757, a treaty was concluded with *Seráj-ud-daulah*, by which he confirmed the privileges of the Company, allowed their goods to pass free of duty by land and water, and permitted them to fortify Calcutta and establish a mint. He also stipulated to allow the *zemindárs* to grant to the Company the villages in the vicinity of Calcutta given by the Emperor's *farmán* "but detained from them by the *Subah*." Hostilities however broke out again immediately, and on the 23rd June of the same year the battle of Plassy was fought, the result of which was that *Mír Jâfier*, *Seráj-ud-daulah's* paymaster and general of the forces, was made *Súbahdár* by the English: and *Seráj-ud-daulah*, being seized at Rájmahal in his flight, was brought back to Múrshedábad and assassinated by order of Míran, son of

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[1]From whom the city of *Múrshedabád* derived its name.

[2]With his permission, when the Marattas invaded Bengal in 1741, the celebrated *Maratta Ditch* was constructed for the defence of Calcutta.

[3]Some lawyers have based the right of the English to Calcutta on conquest. In 1782 Hyde, J. (Chambers, J., concurring): said—"We say the inhabitants of this town are all British subjects, because this town was conquered by Admiral Watson and Colonel Clive, but that does not extend to subordinate factories"—In the *Goods of Baksh Ali Gauni*, Morton's Decisions, p. 103.

Mír Jâfíer. By the treaty concluded with Mír Jâfíer he agreed to grant to the Company the land within the Maratta ditch and six hundred yards without the ditch ;[1] also that the land lying to the south of Calcutta as far as *Kalpí* should be under the *zemindarí* of the Company, who were to pay the revenue "in the same manner with other zemindárs." The revenue of this *zemindarí* was fixed at Rs. 2,22,958 ;[2] and as it included twenty-four *parganas* or local divisions, it gave its name to the district around Calcutta, which is still known as the district of the *Twenty-four Parganas.*

§ 7.—In 1759 Mahomed Alí Gohur, son of the Emperor *Alamgír* II, assisted by the *Súbahdár* of Oudh, invaded Bahár ; but, upon Clive's march to Patna, the Súbahdár deserted him and he was forced to throw himself upon Clive's compassion, who sent him five hundred gold mohurs.[3] In the following year 1760, his father having been assassinated by *Ghazí-ud-dín,* he assumed the title of Emperor and again invaded Bahár, but was defeated by Colonel Calliaud on the 22nd February, after which he marched upon Patna. Míran, Jâfíer's son, upon whose vigour his father's administration principally depended, having been killed by lightning in his tent on the 2nd July, the English now determined to depose the feeble *Mír Jâfíer* in favour of his son-in-law *Mír Kásim.* In carrying out this arrangement, it was stipulated by a treaty concluded with *Mír Kásím* on the 27th September 1760, that the three districts of Bardwan, Midnapore and Chittagong, which yielded about one-third of the entire revenue of Bengal, should be assigned to the Company to meet the charges of the army and provisions for the field. Major Carnac, having again defeated the

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[1]The *Sanad* for the free tenure of the town of Calcutta by which the rents of the mauzahs Gobindpúr, Chauringhi, &c., amounting to Rs. 8,836 were "forgiven," will be found at p. 25 of vol. i of *Aitchison's Treaties.*

[2]See the *Sanad—Aitchison's Treaties*, vol. i, p. 17.

[3]A gold mohur is equivalent to sixteen rupees. It was on this occasion that Mír Jâfíer, who had been terribly alarmed at the Prince's advance, granted out of gratitude to Clive, as a *jagír* or assignment, the quit-rent which the Company had agreed to pay for the zemindarí, of the Twenty-four Parganas. By a subsequent *Sanad* of the Nawáb dated 23rd June 1765, and a *farmán* of the Emperor, dated 30th September 1765, this *Jagír* was confirmed to Clive for ten years, from the 16th May 1764, after which or at the death of Clive, if it occurred before the expiry of this term, it was to revert to the English Company as an unconditional jagír and perpetual gift.

Emperor's troops early in 1761, made overtures of peace, which were gladly accepted, and the Emperor was conducted to Patna, where he invested Mír Kasim with the *Súbahdári* of Bengal, Bahár and Orissa on condition of his paying twenty-four lákhs of rupees annual revenue. On this occasion the Emperor offered to the Company the *Díwání* of the three provinces, which was actually granted four years after. Serious disputes having arisen between *Mír Kasim* and the English, war broke out at last. *Mír Kasim* having been defeated, and having murdered the English prisoners who fell into his hands, fled to Oudh ; and *Mír Jâfíer* was reinstated in the *Súbahdári*. By a treaty concluded with him on the 10th July 1763, the cession of Bardwan, Midnapore and Chittagong was confirmed. On the 23rd October of the following year (1764), the Nawab Vizier of Oudh, who had invaded Bahár, was decisively defeated at the battle of Buxar. *Mír Jâfíer* died in January 1765 and was succeeded by his son *Nadjam-ud-Daulah*, who by a treaty dated 25th February 1765, confirmed all previous grants to the Company, and made over to them the military defence of the country, agreeing to maintain such troops only as were immediately necessary for the dignity of his person and government and for the business of the collections throughout the provinces. In less than six months after the date of this treaty the Emperor granted the Díwání to the Company. The exact position of the English in India at the time of the grant of the Díwání, but before such grant, was then as follows :—(1) A Company incorporated under the authority of the British Government had obtained a free tenure of the site of Calcutta : (2) The same Company had obtained a *zemindarí*[1] of the Twenty-four Parganas : (3) also a cession from the *Súbahdár* of the revenue of the districts of Bardwan, Midnapore and Chittagong : (4) were entrusted with the

[1]The word *zemindár* is derived from "zemin" = land. and "*dar*" = a holder or possessor. Its actual meaning varied and varies in different parts of India. In some places it meant properly a "landholder". In other places it meant the person who collected the revenue on behalf of the Government. In the former sense it designated in some parts of the country the holder of a small portion of land, generally a share in that belonging to the village community : and the *landholder* might even be the actual cultivator : in other parts it was applied to the holder of a large tract, who collected the revenue from the actual cultivators, levied internal duties and customs upon articles of trade,

military defence of the three provinces of Bengal, Bahár and Orissá, the cost of which was to be defrayed from the revenue of these three districts: and (5) enjoyed peculiar privileges of trade.

§ 8.—After the battle of Buxar and the defeat of *Shuja-ud-Daulah*, Nawáb of Oudh, the Emperor ceded to the Company Ghazipúr and Benares, or the zemindarí of Raja Bulwant Singh (29th December 1764). The Directors having, however, condemned this transaction, these districts and the rest of his territory were in 1765 restored to the Nawáb of Oudh with the exception of Corah and Allahabad, which were left in the Emperor's possession.[2] The Emperor, Sháh Alam, now resided several years at Allahabad; but, being desirous to mount the throne at Delhi, he put himself into the hands of the Marattas, who were gradually recovering from their defeat at Pánipat. On the 25th December 1771, they conducted him into Delhi with great ostensible pomp, but afterwards kept him in their hands as a mere puppet.

In 1773 they extorted from him a grant of Corah and Allahabad, but the Emperor's representative having refused to surrender these districts and having appealed to the English, it was held that the grant to the Marattas was contrary to the Treaty of 1765, by which they were given to the Emperor for the support of his own dignity; that by such grant he had "forfeited his right to the said districts," and that they had "reverted to the Company from whom he received them." They were therefore sold for fifty lákhs of rupees to the Nawáb of Oudh on the 7th September 1773.

§ 9.—The Emperor being now in the hands of the Marattas possessed no real power; the payment of the twenty-six lákhs of rupees reserved in the grant of the Díwání was

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imposed petty taxes, and even administered civil and criminal justice. In times of disturbance and during the decline of the Mogul Empire the power of these *zemindárs* varied according to local circumstances and the propinquity of the Emperor or some powerful Viceroy. The different meanings of the word are to be found in the different phases of the history of the country. "*Zemindárí*" means the office of a zemindár, the tract of land held by him, and for which he was liable, whatever was the nature of his holding, to pay revenue to the Government. Land granted free of revenue was termed *lakhiráz* from la= not and *khiráj*= tribute, revenue.

[2]See Articles 4 and 7 of the Treaty of the 16th August 1765—*Aitchison's Treaties*, vol. ii, pp. 77,78. The Nawáb of Oudh is usually known as the *Nawáb Vizier*, *Shah Alam* having conferred the office of Vizier upon him; when he himself assumed the title of Emperor

stopped; and the Nawáb Vizier was the *de facto* sovereign of Oudh and a considerable portion of territory in northern India. In 1768, a treaty was concluded between the English Company and the *Súbahdár* of Bengal, Bahár and Orissa, on the one part, and the Nawáb Shujá-ud-Daulah Vizier of the Empire, on the other part, to the effect that the latter should restrict his army to 35,000 men. In 1775, Shujá-ud-Daulah died and was succeeded by his son *Asaf-ud-Daulah* with whom a new treaty[1] was concluded on the 21st May 1775. It was now stipulated that the payment made for the services of British troops should be raised to Rs. 2,60,000 a month for each brigade, and that "all the districts dependent on the Raja Cheit Singh, together with the land and water duties and the sovereignty of the said districts in perpetuity," should be given up to the English Company. The territories so ceded were Sarkár[2] Benares, Sarkár Chumah, Sarkár Ghazípúr, Saktessgar, the districts of Jaunpúr, Bíjehpore Bahdore, Malbass Kauss, the pargana of Sikandapúr, Jeride, Shaay Abad, Tappa, &c., and the mint and Kotwalí of Benares.[3] In 1781, the Nawáb Vizier having got into great pecuniary difficulties about the payment of the large sums required for the English troops, relief was given to him by a new treaty, under the terms of which all the troops were to be withdrawn except a single brigade and one additional regiment. Owing, however, to the weakness of the Nawáb's Government, it was found unsafe to withdraw the troops, and in 1786 a further agreement was made, by which the Nawáb was to make an annual payment of fifty lákhs in satisfaction of all claims. The pecuniary difficulties of the Nawáb still, however, continued, owing to his incapability and the mismanagement of his finances.

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[1]It may be observed that the *Súbahdár* of Bengal, Bahár and Orissa was no party to this treaty. He had been relieved of the performance of the duties of the Nizámat, his political importance was gone, and he had now really become a pensioner of the Company. Mr. Harrington (Analysis, vol. i, p. 4) puts the change even earlier and dates it from 1765.

[2]*Sarkár*—"the Government," "the State" is sometimes used to designate a subdivision of *Súbáh*, containing several parganas, a province.

[3]This treaty was negotiated under the auspices of Mr. Francis and the other Members of Council appointed under *The Regulating Act* of 1772, who had arrived in Calcutta on the 19th October 1774. Francis had condemned Warren Hastings for letting the Company's troops out to hire, but he himself continued the practice.

§10.—In 1797, Asaf-ud-Daulah died and was succeeded by *Mirza Ali*, whose illegitimacy having been proved; *Sudat Ali*, the brother of the deceased Nawáb and the eldest surviving son of Shúja-ud-Daulah, became Nawáb Vizier[1] (21st January 1798). A new treaty was concluded with him on the 21st February 1798, by which it was agreed that the annual subsidy to the English for the military defence of his territories should be increased to seventy-six lákhs, and the English forces maintained in the country of Oudh for its defence should never consist of less than ten thousand men. The fort of Allahabad was also placed in the hands of the English, and the new Nawáb engaged to be guided by the advice of the Company's Government in making such reductions as would enable him to meet his liabilities under this treaty. Difficulties, however, ensued, the subsidy was not regularly paid, and it was at last in 1799 proposed to the Nawáb Vizier that he should cede a certain portion of his territory as a substitute and provision for the money-payment After a display of considerable reluctance on his part a treaty was at length concluded on the 10th November 1801, by which he ceded to the Honorable the East India Company in perpetual sovereignty those territories in the Doab, which were afterwards, by section 2 of Regulation II of 1803, divided into seven zillahs or districts, namely, Moradabad, Bareilly, Etawah, Furruckabad, Cawnpore, Allahabad, and Goruckpore. In return for this cession of territory, the East India Company engaged to defend the territories which remained to His Excellency the Vizier against all foreign and domestic enemies and to guarantee to him, his heirs and successors, the possession of the territories so remaining together with the exercise of his and their authority within the said dominions.[2] The Nawáb Vizier further engaged to reform his internal administration, "to advise with the British Government and to conform to its counsels in all affairs connected with the ordinary government of his dominions and with the usual exercise of his Excellency's established authority." A Resident was to be stationed at Lucknow, and through him the advice of the British Government

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[1]Sir John Shore was himself on the spot, and, though threatened with considerable danger by Mirza Ali and his party, carried out the necessary steps for his removal with temper, ability, and firmness.

[2]See the Treaty—*Aitchison's Treaties*, vol. ii, p. 121: and the subsequent Memorandum, p. 127, *idem*.

was ordinarily to be given ; though on important occasions the Governor-General might make a direct communication in person or by letter.[1] Three members of the Civil Service were appointed to be a Board of Commissioners for the

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[1]This was a treaty of unequal alliance, involving guarantee, protection, and a right of interference in the internal administration of the Nawáb Vizier's dominions, which thus became what Western Inters' national Lawyers would call a *semi-soverign* State (see Wheaton-Elements of International Law, p. 45). It may be convenient to give here a brief account of subsequent dealings with the family of the Nawáb Vizier of Oudh. In 1812, a treaty was concluded with Nawab Sadat Ali which provided for the adjustment of the boundary line between the British territories and Oudh, as the course of the rivers which formed the original boundary changed from time to time. Sadat Ali Khan died on the 11th July 1814 and was succeeded by his son Ghaziud-dín Heider, with whom all previous treaties were continued. In 1814, Lord Moira (afterwards Marquis of Hastings) was at Cawnpore in order to be near the scene of the Nipâl war. Differences had arisen about the extent of interference exercised in the internual administration by the Resident; and the Nawáb Vizier, having sodjght a personal interview with the Governor-General in order to their adjustment, was so gratified with the courtesy with which he was treated by Lord Moira that he offered him a present of a crore (ten millions or one hundred lákhs) of rupees (£1,000,000). The present was of course declined, but Rs. 1,08,50,000 was taken as a loan bearing six per cent. interest, which was to be devoted to the payment of certain stipends guaranteed by the British Government, the principal of these stipends, as they lapsed, being repayable to the Nawáb. A second loan of a similar amount and at similar interest was taken in March 1815 to meet the continued expenses of the Nipâl war, at the conclusion of which this amount was paid off by ceding to the Nawáb that portion of the territory conquered from the Gúrkhas, which lies between the river Gograh and the district of Goruckpúr. At the same time (1st May 1816) the pargana of Nawábgunj in the district of Goruckpúr was given in exchange for the pargana of Handia lying between the British district Jaunpúr, Mirzapúr, and Allahabad. In 1819 the Vizier formally renounced his dependence upon the titular Emperor of Delhi, and with the recognition of the British Government assumed the title of King of Oudh. Ghaziud-dín Heider died in 1827, and was succeeded by his son Nasir-ud-din Heider, who died in 1837, and was succeeded by his uncle Mahomed Ali Sháh. The last-mentioned King died in 1842 and was succeeded by his son Amzad Ali Sháh, who was in 1847 succeeded by his son Wajid Ali Sháh. The conditions of the treaty of 1801, which empowered the British Government to interfere in the internal administration, had always proved a source of difficulty, more especially as the Nawáb Vizier of that time or his successors had never effectually carried out the sixth article of that treaty by which His Excellency engaged that he would establish in his dominions "such a system of administration to be carried into effect by his own officers, as shall be conducive to the prosperty of his subjects, and be calculated to secure the lives and property of the inhabitants". As

administration and settlement of the ceded territory; and Henry Wellesley, brother of the Governor-General, was nominated President of the Board and Lieutenant-Governor of the new provinces.

§ 11.—Sevají, the founder of the Maratta power, was born in 1627, and was the grandson of Malljí Bhonslay, a captain of horse in the service of the kind of Ahamednagar. Having made himself master of his fathr's jagír of Púna, he commenced a sort of guerrilla warfare upon his neighbours, and rapidly extended his authority and his territory, until, at the age of thirty-five, he was in possession of the whole coast of the Concan, from Callian to Goa. He then attacked the Mogul dominions; and Shaista Khan, afterwards Súbahdár of Bengal, was sent to repel him. Notwithstanding the plunder of Surat and Barcelore, he was as unable to resist the overwhelming forces which Aurangzíb sent aganst him and he submitted and entered into the service of the Emperor. Considering himself insulted by his treatment at court, he eluded the vigilance that would have detained him, and returned to consolidate his dominions and renew his ravages. On the

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the beneficial results of good administration gradually showed themselves in the neighbouring territories subject to British rule, the mal-administration of Oudh and its effects became more conspicuous, and forced themselves on the notice of the Power with whom the above stipulation had been entered into and upon whom therefore devolved the duty of seeing it carried into operation—a duty towards the people of the country, which lay at the very foundation of the principles upon which the treaty of 1801 rested. Repeated admonitions and warnings having proved wholly infructuous, the British Government at last resolved to assume the administration of the country. The King, Wajid Ali Sháh, having refused to sign a new treaty which was proposed to him, the Government of the country was taken over by the British absolutely and for ever in February 1856. A provision of twelve lákhs a year was made for Wajid Ali Sháh, who is allowed to retain the title of King during his lifetime. On his death the title will cease and the stipend will be reduced to a suitable provision for the family of the ex-King. The annexation of Oudh as well as other acts of the British Government, has formed the subject of severe criticism and censure with persons who have failed to realise the true position of the British power in India. Successor partly by treaty, partly by conquest, to the Mogul Emperor and the various dynasties, which struggle in vain amongst themselves for pre-eminence, the British have become emphatically the Paramount Power in India. The duty of such a power, especially under the peculiar circumstances cannot be measured by, as its whole authority is not derived from, treaties or any form of social or national compact.

6th June 1674, he assumed the *insignia* of royalty. He died on the 5th April 1680 greatly to the satisfaction of Aurangzíb, who then bringing his whole power to bear against the Marattas wrested from them most of Sevaji's conquests, and taking his son Sambají prisoner, put him to a cruel death. Saho or Sahají, Sambají's son, was detained in captivity during Aurangzíb's lifetime. After the Emperor's death he obtained his release ; and, returning to the Deccan, notwithstanding the opposition of his cousin Sevají and his aunt Tara Bai, recovered his rights through the ability and exertions of Balají Wiswanát, his minister or *peishwa*, who was originally the hereditary accountant of a village in the Concan. Balají subsequently became the real head of the Marattas, while Sahají settled down to a life of ease at Sattara, of which place his descendants became the Rájás. Balají Wiswanát died in October 1720 and was succeeded by his son Baji Rao, the office of Peishwa now becoming hereditary in his family. He concluded the first treaty with the English in 1739, about a year before his death. It related to commercial matters chiefly. He was succeeded by his son Balají Rao, usually known as the Nana Saheb, with whom the English entered into an agreement in 1755 to unite their forces for the purpose of attacking the pirate Angria or Tulají. This expedition proved completely successful in 1756 under the command of Admiral Watson and Clive, Gheriah, the stronghold of the pirate, having been taken and plundered. Sahají, before his death, which occurred in 1749, executed a deed, by which he transferred all power to the Peishwa on condition that the royal title and dignity should be maintained in the house of Sevají. Balají Rao became thus the acknowledged head of the Marattas, who were now at the zenith of their power. That power was however broken at the battle of Pánipat on the 6th January 1761, and Balaji, who never recovered the shock of this disaster, died soon after. He was succeeded by his son Madhu Rao, a minor. Raghoba, Balají's brother, acted as regent during the minority, and, after Madhu's death in 1772 and the murder of his brother and successor Narain Rao, usurped the office of Peishwa. He was at first assisted by the English, to whom he offered to cede Bassein, the island of Salsette and other islands on the Bombay coast ; but the Supreme Government at Calcutta disapproved of the arrangement, and on the 1st March 1776, through their special agent, Colonel Upton,

concluded the treaty of Púrandah,[1] which acknowledged the party who opposed Raghoba, and wished to set up as Peishwa Madhu Rao Narain, the posthumous son of the murdered Narain Rao. The terms of this treaty having been evaded, the English resolved to assist Raghoba and made a new treaty with him on the 24th November 1778. The English troops were defeated and the disgraceful convention of Wargaum was the result. This Company's Government would not admit the validity of this convention. Further hostilities and negotiations ensued; and at last the treaty Salbye was concluded and ratified at Fort William on the 6th June 1782. This treaty provided, amongst other things, that the territories conquered from the Peishwa after the treaty of Púrandah should be restored, and that Salsette and three other islands, as well as the city of Broach, should remain in the hands of the English. Madhu Rao died on the 27th October 1795; and after much dispute as to the succession, Baji Rao, the son of Raghoba, became Peishwa, chiefly through the support of Daulat Rao Sindia.

§ 12.—War soon after broke out between Sindia and Holkar[2] in 1801, which resulted in the defeat of the combined forces of

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[1]This treaty ceded the city and pargana of Broach and territory in the vicinity yielding three lákhs. The 13th article declared that the *chaut* of Bengal and its dependencies had been for time out of mind part of the Jagír of Bhonslay, and could not therefore be withdrawn; but that, if he or his descendants created disturbances by claiming it, the Marattas would not assist him.

[2]It is not within the scope, and it would scarcely be possible within the limits, of this Work to give even a brief sketch, that would be intelligible, of the rise of *all* those powers which the English found established in India in a state of more or less complete independence. The reader is supposed to be acquainted with the general history of the country as given in Mill's or Thornton's volumes. The student will also find Mr. Marshman's more recent and less expensive work a most useful companion, containing all that is necessary to give an exact and succinct view of the rise and fall of the various powers which from time to time existed in India. The following Note may however be useful here. The Maratta Power, in its ultimate development, was rather a confederacy of powerful chiefs than a State under an individual head. The process of development afforded considerable opportunity for the exertion of personal ability, which was sure to raise its possessor into a position of importance. Thus, while the Peishwa was regarded as the head of the confederacy, Sindia, Holkar and Guikwar acquired territory and an independent position of their own.

Ranají, the founder of the House of Sindia, though belonging to a respectable family near Sattara, began life as slipper-bearer to the Peishwa Bají Rao, through whose favour he rose to be a commander of

Sindia and the Peishwa at the battle of Púna on the 25th October 1802. Bají Rao, forced to fly from Púna to escape

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troops, and acquired some possessions in Malwa, where he died. His second son, Mahají Sindia, succeeded him. He was present amongst the other Maratta chiefs at the battle of Pánipat, where he was lamed for life. He afterwards, however, organized a considerable army trained under French officers, and took a leading position in Maratta politics. He was made the mutual guarantee of the Peishwa and the British for carrying out the terms of the Treaty of Salby, by which his independence was first acknowledged by the British. Mahají Sindia died in 1794 and was succeeded by his grand-nephew, Daulat Rao Sindia, who became one of the most formidable antagonists of the British power. His attempts to defeat the Treaty of Bassein brought on war; but his power was completely broken by the battles of Delhi (11th September 1803), Assaye (23rd September 1803), and Laswari (1st November 1803); and he had no alternative left but to submit to the severe terms imposed by Lord Wellesley, and which were incorporated in the Treaty of Sirjí Anjengaum, by which he ceded to the British a large portion of his territory, including all that in the Doab. In 1805, Gwalior and Gohud were ceded to him, and the river Chumbul was made the northern boundary of his territories. Daulat Rao Sindia died in March 1827, leaving no son. A youth, named Jankají Rao Sindia, was adopted to succeed him. He died on the 7th February 1843, also without leaving any son or successor. His widow, however, adopted a son, usually called Babají Sindia, who on his accession assumed the title of Alijah Jyají Rao Sindia. At the time of his adoption he was about eight years of age, and the disputes which ensued as to who should exercise the powers of regent during his minority led to disturbances, which resulted in the withdrawal of the British representative from Gwalior, and finally in war. After the defeat of the Gwalior troops at Maharajpur and Punniar, the treaty of the 18th January 1844 was concluded, by which territory yielding eighteen lákhs was ceded for the support of the Contingent Force under British officers stationed in Sindia's territories for their protection; and it was stipulated that Sindia's troops should not in future exceed nine thousand men, with twelve field guns and twenty other guns. This Contingent Force mutinied in June 1857. The Maharaja Sindia, though deserted by his troops on the approach of the mutineers under Tantia Topí in June 1858, maintained the cause of the English, and was restored to his palace by Sir Hugh Rose's force. For his fidelity in the mutiny he received a *sanad*, dated the 11th March 1862, confirming the possession of the Gwalior State to his heirs lineally descended or adopted; and he was allowed to increase his army by 2,000 men, and his artillery by four guns. Finally, a new treaty was concluded on the 12th December 1860, by which the relations of the two contracting powers were placed upon a clearly defined basis, and certain exchanges of territory were effected in order to make the dominions of each more compact.

The founder of the House of Holkar was Mulhar Rao, a Dhúngar, or shepherd, on the Nira, south of Púna, who also rose to importance under Bají Rao. He was present at the battle of Pánipat, and was suspected of having made too early a retreat. He died in 1767, and was succeeded by his grandson Mallí Rao, who died insane a few months after. On this Aliá Bai, Mallí Rao's mother, ruled the Indore State, making Túkají

falling into the hands of Holkar, now made an urgent application to the British for assistance. The result of this application

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Holkar her commander-in-chief. Túkají's illegitimate son, Jeswant Rao, next became the head of the House, and was strong enough to defeat the combined forces of Sindia and the Peishwa in the battle of Púna in 1802. After the treaty of Sirjí Anjengaum with Sindia, Holkar provoked hostilities with the British, was defeated, pursued by Lord Lake across the Sutlej, and finally forced to sign a treaty on the banks of the Beas on the 24th December 1805, by which he ceded a large portion of territory and gave up all claims on the province of Bundlekund. Jeswant Rao died in 1811, leaving a minor son Mulhar Rao. The disturbance which took place during his minority led to war. The Indore troops were defeated at Mehidpore, and on the 6th January 1818 was concluded the treaty of Mundisore, by which Holkar ceded to the British Government all claims of every description against the Rajpút princes of Oodeypúr, Jeypúr, Jodhpúr, Kotah, Bundi, and Keraúlí—ceded all the territory within and north of the Bundi Hills, also all territory within and south of the Sautpúra Hills, and also his possessions in Khandeish; and agreed that a British field force should be stationed in his territories to preserve internal tranquility and protect them from foreign enemies. His independence of the Peishwa was guaranteed by this treaty. Mulhar Rao Holkar died without issue in 1833. His mother and widow adopted a child of four years of age to succeed him, who was styled Martund Rao Holkar. He was opposed by Hurri Rao Holkar, a cousin of Mulhar Rao, who having the popular voice on his side, and being supported by the British, ultimately triumphed. Hurri Rao died in 1843, having in 1841 adopted Khundí Rao, then a boy of thirteen years of age, who was acknowledged by the British, but died the following year. The appointment of a successor was declared to rest with the British Government, and the present Chief Túkají Rao Holkar was appointed.

Khundí Rao Dúbárí was the Sanapatí, or commander-in-chief of Sahají, who on his recommendation appointed Damají Guikwar his second-in-command, or *Sena Khas Kheyl.* Khundí Rao had followed the predatory habits of the Marattas in Guzerat, which came to be regarded as belonging to his family. He was succeeded by his son, Trimbuk Rao Dábárí, who was succeeded by his infant son, Jeswant Rao, Damají Guikwar was succeeded in his office by his nephew, Piláji Guikwar, who was succeeded by his son, Damají Guikwar. Jeswant Rao not having sufficient vigour to hold his position, the Guikwar family took the place of the Dábáris, and Damají Guikwar became the head of the State. On his death the succession was disputed between his sons, Syají Gobind Rao, Manají, and Futteh Singh. After a time Futteh Singh was acknowledged as *Sena Khas Kheyl.* He died in December 1739, and Gobind Rao ultimately succeeded. He died in 1800, and his eldest son and successor Anand Rao being of weak intellect, his illegitimate half-brother, Kanají Rao became the real ruler. Kanají was deposed by a party headed by Raojí Appají, who being hard pressed by the opposite side, appealed to the British Government for protection. A subsidiary force was accordingly sent to his assistance, and a cession of territory equal to a monthly income of Rs. 65,000 was made to pay the expense of maintaining it. The arrangements made on this occasion

was the celebrated Treaty of Bassein, dated the 31st December 1802, by which it was stipulated that the British Government should never permit any power or state whatever to commit with impunity any act of unprovoked hostility or aggression against the rights and territories of the Peishwà, but should at all times maintain and defend the same; and that the Honorable East India Company should furnish a permanent subsidiary force of not less than six thousand regular native infantry, with the usual proportion of field pieces and European artillerymen "with a view to fulfil this treaty of general defence and protection." For the payment of the expense of this force, the Peishwa assigned and ceded in perpetuity certain territories detailed in a schedule annexed to the treaty, yielding an annual revenue of twenty-six lákhs of rupees. By a supplementary Treaty, dated the 16th December 1803, part of the territory so ceded was exchanged for territory in the province of Bundlekund, yielding an annual revenue of Rs. 36,16,000, to be taken "from those quarters of the province most contiguous to the British possession, and in every respect most convenient for the British Government.[1] The territory selected and ceded in full sovereignty under this Supplemental Treaty was formed into the British *zillah* or district of Bundlekund (see Section 4, Regulation IX of 1804, and Section 3, Regulation VIII of 1805). The territories ceded nearly at the same time by Daulat Rao Sindia under the provisions of the

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were embodied in a formal treaty on the 29th July 1802, the 5th article of which declared that "there shall be true friendship and good understanding between the Honorable English East India Company and the State of Anand Rao Guikwar, in pursuance of which the Company will grant the said Chief its countenance and protection in all his public concerns, *according to justice and as may appear to be for the good of the country, respecting which he is also to listen to advice.*" In the Malsa Kaunt in the Guikwar's own handwriting occurs the passage "*or even should I myself, or my successors, commit anything improper or unjust, the English Government shall interfere and see that it is settled according to equity and reason*". This treaty was recognized by the 14th article of the Treaty of Bassein. Anand Rao died in October 1819, and was succeeded by his brother, Syají Rao, who died in December 1847, leaving three sons, Gunpat Rao, Khundí Rao, and Malhar Rao. Gunpat Rao was ruler of the Baroda State from his father's death until his own in November 1856. He was succeeded by his brother, Khundí Rao, who was succeeded by the third brother, Mulhar Rao, whose recent trial and deposition created considerable excitement in India. He has been succeeded by a member of the Khandeish branch of the family raised to the *gadi* by permission of the British Government.

[1] The first Peishwa acquired territory in Bundlekund by being adopted as the son of Chattersal, Rájá of Bundlekund.

treaty of Sirjí Anjengaum (30th December 1803), and which are designated in Bengal Regulations as "*The Conquered Provinces situated within the Doab and on the right bank of the river Jumna,*" were formed into the British zillahs or districts of Pánipat,[1] Allyghur, northern division of Saharanpúr, southern division of Saharunpúr, and Agra (see Section 3, Regulation IX of 1804, and Section 3, Regulation VIII of 1805). The territories ceded by the Nawáb Vizier and by the Peishwa,[2] and those taken by right of conquest from Daulat Rao Sindia, are generally denominated in the Bengal Regulations "*The Ceded and Conquered Provinces.*" They were subsequently, with some additions, formed into the Lieutenant-Governorship of the North-Western Provinces.[3]

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[1]Zillah Pánipat was the territory adjacent to the city of Delhi, which, with the city, were assigned to the Emperor Sháh Alam for his maintenance.

[2]It may be convenient to notice here the end of the dynasty of the Peishwa. Bají Rao broke out into hostilites in 1817 by attacking and plundering the British Residency of Púna. His troops were defeated at the battles of Kirkí, Korygaum, and Ashtí; and he was forced to throw himself on the mercy of the British, and to accept the terms offered him, on the 1st June 1818, which were that he should resign for himself and his successors all right, title, and claim over the Government of Púna, or to any sovereign power whatever, and accept a pension from the British Government. A pension of Rs. 8,00,000 a year was allowed him, and he was settled at Bithúr, near Cawnpore. He died on the 28th January 1851, bequeathing what property he possessed to his adopted son, Dhúndhú Punt Nana, to whom the Jagír of Bithúr was granted for life by the British Government. Bají Rao's pension was not continued to his family. Dhúndhú Punt was the infamous Nana Saheb of the Mutiny.

[3]By the 3 and 4 Will. IV, Cap. 85, S. 38 (1833), it was enacted that the territories subject to the Government of the Presidency of Fort William in Bengal should be divided into two distinct Presidencies, to be styled the *Presidency of Fort William in Bengal* and the *Presidency of Agra.* These provisions were not, however, carried into effect, and they were suspended by the 5 and 6 Will. IV, Cap. 52 (1835), which enacted that, during their suspension, the Governor-General in Council might appoint a Lieutenant-Governor of the North-Western Provinces, and from time to time declare and limit the extent of the territories to be placed under, and the extent of the authority to be exercised by, such Lieutenant-Governor. A Lieutenant-Governor was appointed under these provisions which were continued by the 16 and 17 Vict. Cap. 95. S. 15 (1853). The 16th section of this last mentioned Statute authorized the appointment of a Lieutenant-Governor of such part of the territories under the Presidency of Fort William in Bengal, as for the time being might not be under the Lieutenant-Governor of the North-Western Provinces. The Lieutenant-Governor of Bengal is appointed under the authority conferred by this section. Under the 3 and 4 Will. IV, Cap.

§ 13.—The Bhonslay family, who ruled Berar with its capital Nagpúr, were another branch of the great Maratta confederacy. The founder of the house is said to have been Parsají, a private horseman, who rose to power under Sahají, and was entrusted with the collection in Berar of the *chauth*, or one-fourth part of the revenue exacted by the Marattas as the price of forbearing to ravage the country. He was succeeded by his son Ragají, who extended his authority from the Nerbudda to the Godavery, and from the Adjuntah Hills to the sea. Having terrified the Peishwa by a march towards Púna, he was bought off by a Jagir of the *chauth* of Bengal and Behár. Ragají died in 1755, and was succeeded by his oldest son Janají, who died without issue in 1772, having adopted his nephew Ragají, a minor, as his successor. Disputes ensued, and Sahají, Janají's brother, seized and held the government until 1775, when he was killed by Madají, the father of minor Ragají. Madají, as regent for the minor, exercised the power of the State until his death in 1788, upon which Ragají, then twenty-eight years of age, succeeded. He refused the overtures of the English to enter into an alliance for the purpose of reducing the rising power of Sindia; and finally, after the Treaty of Bassein, joined Sindia in the war against the English, and shared Sindia's defeat. Reduced to extremities by the loss of the battle of Argaum, and the capture of the fort of Gawilgur, Ragají sued for peace, and on the 17th December 1803 signed the Treaty of Deogaum, the terms of which were negotiated by Mr. Mountstuart Elphinstone. By this treaty the province of Cuttack, including the port and district of Balasore, and all the territory west of the river Wurdah and south of the Nernulla and Gawilgur Hills were ceded to the Honorable Company in perpetual sovereignty. Ragají died in 1816, and was succeeded by his son Parsají, under the regency of Appa Saheb, his cousin, by whom he was murdered in 1817. Appa Saheb now became the head of the Nagpúr State, and joining the Peishwa commenced hostilities by an attack on the Residency on the 26th November 1817. He was, however, repulsed, and, on the 6th January 1818, was compelled to sign a provisional agreement, ceding territory for the support of a British Contingent Force,

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85, S. 69, the Governor-General in Council had been authorized, as often as the exigencies of the public service required, to appoint a *Deputy Governor* of the Presidency of Fort William in Bengal, *i.e.*, of the Presidency as constituted by the 38th section above referred to.

and engaging to conduct the government according to the advice of the Resident. He had scarcely signed this agreement when he commenced fresh intrigues, was in consequence arrested, made his escape, and, after an in effectual attempt to recover Nagpúr, died at Jodhpúr, in 1840. After his flight Ragají's daughter's son, who also took the name of Ragají, was made Rájá of Nagpúr on the 26th June 1818, the Resident managing the State during his minority. On his coming of age in 1826, a new treaty was concluded, by which, admitting that he succeeded by the favour of the British Government, he agreed not to enter into negotiations with any other State without consulting the British Government; he ceded in perpetuity, for the support of the British subsidiary force, Mundilla, Jubbulpúr, Seoni, Chauragur, Rewa, Baitúl, Mullagí, Sambhulpúr, and Patna with its dependencies; and bound himself to adopt such regulations and ordinances as should be suggested by the British Government, through its representative, for ensuring order, economy, and integrity in every department of the government. Ragají died on the 11th December 1853 without issue or male relations, and without having adopted a son. The succession in the Bhonslay family was hereditary in the male line to the exclusion of females. The State had been forfeited in 1818 by the hostility of Appa Saheb, and had been declared to belong to the British Government by right of conquest. The grant to Ragají was made out of grace and favour; and, on the death of the donee without heirs, the territory lapsed to the donor and being incorporated with the British dominions, was formed into the Chief Commissionership of the Central Provinces.

§ 14.—The acquisition of territorial sovereignty in India by the Company has been always held to have been made on behalf of, and in trust for, the Crown.[1] At what precise time

[1]This proposition was advanced on the occasion of every discussion as to the renewal of the Company's privileges. The Statute 53 Geo. III, Cap. 155, S. 95, declared the *undoubted sovereignty* of the Crown over the territorial acquisitions of the East India Company. The 16 and 17 Vict., Cap. 95, S. 1, provided that the territories then in the possession and under the Government of the Company should continue under such government *in trust for* Her Majesty, her heirs and successors, until Parliament should otherwise provide. As to the principle that a subject cannot in his own right acquire foreign territory, and that the sovereignty thereof when acquired vests in the Crown, see *Campbell* v. *Hall*, 20 State Trials, 323; *The Foltina*, 1 Dods, 451; and the remarks of Lord Brougham in *The Mayor of Lyons* v. *The East India Company*, 1 Moo. Ind Ap., 274.

the Company exchanged the character of subjects for that of sovereign, and obtained for the Crown the rights of sovereignty is by no means clear. For a long time after the first acquisition, no such rights were claimed, nor any acts of sovereignty exercised.[1] But though the precise date of the acquisition of

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[1] *Per* Lord Brougham in *The Mayor of Lyons* v. *The East India Company* (1836), 1 Moo. Ind. Ap. 274. In the same case the earlier position of the English in India is thus described : "Enough has been said to show that the settlement of the Company in Bengal was effected by leave of *a regularly established Government, in possession of the country, invested with the rights of sovereignty and exercising its powers ;* that, by permission of that Government, Calcutta was founded and the factory fortified in a district purchased from the owners of the soil by permission of that Government, and held under it by the Company as subjects owing obedience, as tenants rendering rent, and even as officers exercising by delegation a part of its administrative authority." In *The Advocate-General of Bengal* v. *Rani Surnamayi Dasi*, Lord Kingsdown said : "The first settlement made in India was a settlement made by a few foreigners for the purpose of trade in a very populous and highly civilized country under the government of a powerful Mahomedan ruler, with whose sovereignty the English Crown never attempted nor pretended to interfere for some centuries afterwards. If the settlement had been made in a Christian country of Europe, the settlers would have become subject to the laws of the country in which they settled." Adverting to the fact that this did not happen, but that they retained their own laws for their own government within the factories which they were permitted by the ruling powers to establish in India, Lord Kingsdown further observed, that "this was not on the ground of general international law, or because the Crown of England or the Laws of England had any proper authority in India, but upon the principles explained by Lord Stowell in a very celebrated and beautiful passage of his judgment in the case of *The Indian Chief* (3 Rob. Adm. Rep., 28)—"In the East from the oldest times," said Lord Stowell in the passage here referred to "an immiscible character has been kept up; foreigners are not admitted into the general body and among the society of the nation ; they continue strangers and sojourners, as all their fathers were—*Doris amara suam non intermiscuit undam*—not acquiring any national character under the general sovereignty of the country, and not trading under any recognized authority of their own original country, they have been held to derive their present character from that of the association or factory under whose protection they live and carry on their trade."—"The laws and usages of eastern countries where Christianity does not prevail," continued Lord Kingsdown in the judgment just quoted from, "are so at variance with all the principles, feelings, and habits of European Christians that they have usually been allowed by the indulgence or weakness of the potentates of those countries, to retain the use of their own laws ; and their factories have for many purposes been treated as part of the territory of the sovereign from whose dominions they come." Before the acquisition of *territorial sovereignty* carrying with it the right to legislate for all classes of subjects, the position of British traders and residents in India was then of this nature—they were aliens living in a

sovereignty cannot be exactly fixed—doubtless because it was effected by a gradual change, not by any single occurrence happening on a particular date—there can be no doubt that, at the beginning of 1806, the sovereignty of the Bengal Presidency had been acquired ; and the British power had become paramount in India. The Emperor of Delhi, deprived of sight by a ruthless marauder (Gholam Kadir, 1788), and then detained for many years a helpless captive in the hands of the Marattas, had gladly thrown himself on the protection of the British, when he was released by Lord Lake after the battle of Delhi[1] (15th September 1803). The Nawáb

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foreign country which had a regular government of its own. Under similar circumstances in the West, according to western international law as accepted by Christian nations, they would have been subject to the municipal law of the country in which they traded or resided temporarily or permanently. This rule of western international law was, however, tacitly acknowledged by both parties (as evidenced by their conduct) not to be applicable in the East to the case of Christians trading or residing in a non-Christian country. This was due on the one hand to the unwillingness of the strangers to subject themselves to rules wholly foreign to their ideas and unsuited to their habits ; on the other hand, to the absence of any desire on the part of the governing powers to impose upon foreigners of another creed the peculiar laws of the country. In these laws the secular and the religious element were so closely intermingled, that it would have been difficult, if not impossible, to apply them to the regulation of the mundane affairs of strangers without at the same time admitting them to a fellowship and an intimacy in religious things, which, according to their ideas, could never be allowed to those who were aliens not only in the temporal state, but also in that great commonwealth which they believed to exist for them alone beyond the limits of time and the confines of the visible word. As rules of international law derive their binding force not from the authority of any paramount legislative power, but from the voluntary consent of nations, it is reasonable to say that the rule thus adopted in the East with the mutual concurrence of those concerned, had for them as much binding force and ultimate effect, as the dissimilar rule, to the control of which the Christian nations of the West have voluntarily subjected themselves. It follows that British subjects resident within their own factories were governed by their own laws as far as the sovereign authority of their own country determined that they should be governed thereby, and this at a time when the British nation were not possessed of territorial sovereignty in India. Sovereignty carries with it the right of legislation. This right was exercised without challenge over the native inhabitants of Bengal, Behár and Orissa, from 1773 (see 13 Geo. III, Cap. 63, S. 36 ; 20 Geo. III, Cap. 70, S. 23; and 37 Geo. III. Cap. 142, S. 8). It may be contended that the sovereignty over these provinces dates from that year.

[1] It has been mentioned in a previous note that the twenty-six lákhs reserved in the grant for the Díwání were withdrawn when he put himself in the hands of the Marattas. This was done by the authority of

Vizier of Oudh had, by the treaty of the 10th November 1801, ceded to the Company a large portion of his territory in perpetual sovereignty, and had agreed to govern the rest under the advice and in conformity with the counsel of the British Government. The Treaty of Bassein, concluded on the 31st December 1802, with the Peishwa, together with the Supplementary Treaty of the 16th December 1803, had acknowledged the supremacy of the British Power, and recognized a similar treaty concluded with the Guikwar on the 29th July 1802. The Treaties of Deogaum with the Rájá of Berar (17th December 1803), of Sirjí Anjengaum with Sindia (30th December 1803), and of the banks of the Beas with Holkar (14th December 1805), had been dictated by the authority of conquest. Seringapatam and with it the power of Tippu Sultan had fallen in Southern India. Of all the States that had from time to time enjoyed a brief superiority, none any longer ventured to contest the supremacy with the British Power, which had by cession and conquest acquired a large territory, and by its strength and the superiority of its arms had raised itself to the position of the Paramount Power in India.[1]

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the Directors (see their letter of 11th November 1768). After the battle of Delhi, he was allowed a pension of Rs. 60,000, afterwards increased to Rs. 1,00,000 a month. Sháh Alam died in 1806, and was succeeded by Akbar Shah, who died in 1837, and was succeeded by Bahadúr Shah, who joined the mutineers in 1857, and was in consequence banished to Rangoon.

[1]General Wellesley (afterwards Duke of Wellington) said that no permanent system of policy could be adopted to preserve the weak against the strong, and to keep the princes for any length of time in their relative situations and the whole body in peace, without the establishment of one power, which, by the superiority of its strength, and its military system and resources, should obtain a preponderating influence for the protection of all. He and his brother Lord Wellesley made the Company this Paramount Power. In treating with Runjít Singh in 1808, Lord Minto told him that the British had succeeded to the power and rights of the Marattas in the north of Hindustan, and therefore held themselves bound to protect the Sikh States of Sirhind. Runjít Singh admitted the argument and signed the Treaty of Amritsir on the 25th April 1809, by which he agreed to respect the rights of the chiefs south of the Sutlege. In the same year the Rajpút princes of Oodeypúr, Kotah, Jeypúr, and Jodhpúr, when applying for protection, represented that there had always been in India some supreme power to which the weak looked for protection against the ambition and rapacity of the strong, that the Company had succeeded to this position, and were bound to fulfil its duties. Sir John Malcolm in his Report on Malwa describes the result of the measures adopted for dealing with the chiefs to be the mutual surrender of the supremacy over the petty States and Chiefs to the British Government. The *Times* in a recent

§ 15.—This Chapter may, perhaps, be usefully concluded with the following table of the years in which some other territories connected with the Presidency of Bengal were acquired :—

Assam was conquered from the Burmese in 1825. Upper Assam was granted to Rájá Púrundur Singh in 1833; but was again resumed, as he was unable to fulfil his engagements.

Arakan and the Tenasserim Provinces were ceded in 1826.

Cachar, except the Hilly part, was annexed in 1830. The Hilly part was annexed in 1853.

The Cossia (Kásia) and Jyntia Hills territory was confiscated and annexed in 1835.

Darjíling was ceded by the Rájá of Sikkim in 1835.

By the Treaty of Lahore, concluded on the 9th March 1846, after the battle of Sobraun, the territory east of the Beas and Hill country between Beas and the Indus, including Cashmere and Hazara, were left in the possession of the English.

On the 29th March 1849, Mahárája Dhulip Singh resigned for himself, his heirs and successors all right, title, and claim to the sovereignty of the Punjáb, or to any sovereign power whatever; and accepted a pension from the British Government. On this occasion the gem called the "Koh-i-núr" passed into the possession of the Queen of England.

The province of Pegu was annexed by proclamation in 1852, after the capture of Rangoon.

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article on the Guikwar's trial correctly remarks :—"The Paramount power in India, as it is vested in the Queen and exercised by her Viceroy, does not derive its force and essence from legislation, or from treatise, or from any form or social or national compact. It rests ultimately on the right of the stronger, the indisputable claim of the conqueror to enjoy his conquests undisturbed, and to insist upon the preservation of peace and decency among his weaker neighbours. This is the principle upon which we have acted, and which India has fully recognized during the political vicissitudes of the last hundred years."

# CHAPTER II.

## THE TENURE OF LAND IN THE BENGAL PRESIDENCY.

§ 16.—The Tenure of Land in India is a subject which has generally been supposed to be one of considerable difficulty. It has been on more than one occasion the source of earnest discussion, conducted with a certain degree of asperity by the holders of different and sometimes contrary opinions, each of whom produced probable arguments in support of the correctness of his particular views. Much of this difference of opinion and much of the difficulty which has surrounded the whole question may perhaps be traced to this fact, that sufficient account has not been taken of the diverse circumstances of different parts of the country. Institutions, which in some places were originally complete in all their parts, and the subsequent development of which was perfect, had in other places an incomplete existence originally, or were afterwards but imperfectly developed. Their growth was impaired or even wholly stopped, and this at different stages in different localities: Here, the plant was stunted and dwarfed; there, wholly rooted out by circumstances of external violence connected with those waves of invasion and conquest which swept with varying violence over the country, sometimes extending their influence directly into every remote channel, at other times producing indirect results by forcing before them the remnant of similar waves that had preceded them. When these disturbing elements had passed away; and, amid the peace of British rule, what remained of former institutions came to be examined, it is not suprising that the more or less imperfect specimens, which were found, suggested various ideas as to the nature of the single whole, which was the prototype of them all.[1]

§ 17.—According to the picture of Hindu society presented by the Code of Manú, drawn up probably in the ninth century before Christ, the government was vested in an absolute monarch acting under the counsel of Bramins. His revenue consisted of a share of all agricultural produce, varying according to the soil and the labour necessary to cultivate it; of taxes on commerce, petty traders and shopkeepers;

[1]Mr. Elphinstone remarks :—"Many of the disputes about the property in the soil have been occasioned by applying to all parts of the country facts which are only true of particular tracts; and by including in conclusions drawn from one sort of tenure other tenures totally dissimilar in their nature."—*History of India*, p. 73.

and of a forced service of a day in each month by handicraftsmen. The share of the produce was one-twelfth, one-eighth, one-sixth, according to circumstances, and might, in cases of emergency, be raised to one-fourth. The Code does not distinctly lay down to whom the absolute property in the soil belonged. It has been argued that it belonged to the King, because he is called the "lord paramount of the soil." The cultivator's proprietary right has, on the other hand, been deduced from the text—"land is the property of him who cut away the wood;" or, in the words of the commentator, "who tilled and cleared it." It has been also said with considerable force that, as the King's share was limited to one-sixth or at most one-fourth, there must have been another proprietor for the remaining five-sixths or three-fourths, who had obviously the greater interest of the two in the whole property shared.[1] The internal administration was to be conducted by a chain of civil officers consisting of lords of single townships or villages, lords of 10 towns, lords of 100 towns,[2] and lords of 1,000 towns. It was their duty to collect the revenue, and they were remunerated by small fees in kind or by a portion of the King's share of the produce.

§ 18.—In later times, and especially after the Mahomedan conquest, many of the links of the system which connected the townships or village community with the governing power became wanting; and other modes of connection were substituted as the policy or necessity of rulers dictated. But whatever were the means of connection, the township or village community possessed an inherent vitality[3] in itself which preserved it amid the revolutions of power and the changes of dynasties. The village community was a little republic, having its own territory and its own municipal government under a headman, formerly the King's agent, and removable at his pleasure, but whose office afterwards became hereditary[4] according to the

[1] *Elphinstone's History of India*, p. 21.

[2] The lordship of 100 towns corresponded to the *Pargana* which still generally exists. Traces of the other divisions are still to be found, especially in the Dekkan, *id.*, p. 61.

[3] See Sir Charles Metcalfe's Minute. Report of Select Committee of House of Commons, 1832, vol. iii, App. 84, p. 331.

[4] It was sometimes elective.—*Maine's Village Communities*, p. 122; *Mr. Shore's Minute of 18th June* 1789, §245, and *Mr. Holt Mackenzie's Minute of the 1st July*, 1819, § 523.

tendency of all Hindu institutions. He settled with Government the revenue to be paid for the year, and apportioned the amount amongst the villagers. For the payment to Government he was held personally responsible, and was punished in cases of default. The territory was the common property of the original inhabitants, the members of the original Patriarchal Family.[1] In some villages the cultivated lands only were divided, periodically interchanges of the portions being occasionally usual,[2] or the division being once for all final and complete. In both cases, however, the waste land remained common for pasturage, until an increased population necessitated an extension of cultivation. In other villages the division included the waste[3] as well as the cultivated land. A compact portion of land was not given to each individual, but a share of each description of soil suitable for the production of each different crop, was assigned to every member of the community.[4] All the members were liable for the dues of Government and other public burdens[5] in proportion to their respective shares.

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[1]See *Maine's Village Communities in the East and West*, p. 15.

[2]*Elphinstone's History of England*, p. 66, *Maine's Village Communities*, pp. 86, 112.

[3]Sometimes again the waste was partly held in common and partly divided.—*Carnegy's Land Tenures of Upper India*, p. 5.

[4]An individual thus had many plots or patches, some north, some south, and some perhaps east and west of the village. This interlacing of plots is one great source of difficulty, when the land of a village comes to be measured.—See the author's *Law of Evidence, Appendix I*, p. 551.

[5]Such as repairs of the walls and temples, the cost of public sacrifices charities, ceremonies, and amusements on festivals. Each township managed its own internal affairs, police, administration of justice, &c. It has been taught by some that this principle of self-government can be restored and adapted to modern requirements. In Bengal Proper the Village Community early fell into decay, if, indeed, it ever existed in its integrity, which may be doubtful. The success of any attempt at *restoration* must therefore be problematical in this part of the country.

The following is a list of the officers of a complete Village Community:—

1. Headman=Patel, mokaddam, mandal, gaud.
2. Accountant=Karnam, kalkani, tallati, patwari.
3. Watchman=Mhar, tillari, paggi, dauráha, paik, pasban, gorayat, chaukidar.
4. Priest or Bramin.
5. Schoolmaster.
6. Astrologer=Fotishi foshi.
7. Smith.
8. Carpenter.
9. Potter.
10. Washerman.
11. Barber.
12. Cowkeeper.
13. Doctor.
14. Musician.
15. Poet, minstrel, and genealogist.

§ 19.—While the Village Community remained in its infancy this simple state of things presented no conflict of rights, no difficult social problems which could not be solved by the Headman assisted by assessors of his own choice, or by arbitrators named by the parties. But as the Patriarchal Family became further developed, as the original stock became more ramified, as the shares of the original members became divided and sub-divided by the operation of a law of inheritance, which did not acknowledge primogeniture,[1] and as the transfer of shares was first allowed and then became usual, —a very much more complex state of affairs arose, new rights sprang into existence, and the idea was created of individual claims at variance with common ownership.[2] Had the lands remained in the possession of the descendants of the original members of the Patriarchal Family, sufficient complexity would have been brought about by the operation of the law of succession; but the introduction of strangers was a fresh source of intricacy. This introduction was effected in two ways: *First*, a member of the community might sell or mortgage his rights to a stranger.[3] This was not, however, very frequent in the early history of the township, though it

In addition to these the *dancing girl* is found in Southern India. Properly speaking, the village officers were twelve in number, *bara ballawatti* or *ayangadi*, but the list varies, some that are found in some villages being wanting in others. Each of them was remunerated sometimes by a fee in money, sometimes by a portion of the produce (ayá), a handful or so out of each measure of grain of every member of the community; but perhaps, more generally by the allotment of a piece of cultivated land, which generally became the hereditary possession of his family. In some places instead of a single headman, there was a village council or *panchayat* (assembly of *five* originally, though the word is used when the number exceeds five); but it may be that these were merely the arbitrators appointed to assist the headman. In *Mr. Shore's Minute of the 18th June* 1789, paras. 242—246, will be found an account of the influence of the headman, and how it was exerted for his own benefit exclusively in parts of Bengal.

[1] For an account of a "heart-rending intermixed tenure" created by subdivision as a result of inheritance, see *Carnegy's Land Tenures of Upper India*, p. 5.

[2] The first division was called *pane* or *patti*. This was subdivided into *tholas* or *thoks*; and these again into *bheris*; but the terms, and even the use of the same terms, varied in different parts of the country.

[3] "When by the process just described" (subdivision by inheritance) "one estate had expanded into several separate properties, it not infrequently happened afterwards that one or more of these properties was overtaken by misfortune, and the proprietors were reduced to every sort of shift to save their land or to make the most they could in parting with it. One member of the community would seek the protection of a chief of his own clan, and make over his holding in trust to

became more common in later times. *Secondly*, the original settlers, finding that they had more good land than they themselves could cultivate, would endeavour to make a profit of it through the labours of others. No method came easier than to assign it to a person, who would engage to pay the Government share of the produce, with an additional share to the community. While land was plenty and many villages in progress, no man would undertake to clear a spot unless he was to enjoy it for ever ; and hence permanent tenants would arise.[1] When a share of the common rights passed into the hands of females or of persons, whose caste prevented them from personally performing the manual labour of cultivation, a similar practice would be adopted as to land already brought under tillage, which would thus be made over to some one who would undertake to cultivate it, to discharge the Government dues, and give a share of the produce to those on whose behalf he cultivated. Temporary tenants would thus be created. Love of ease so natural to the native of India, and ambition to enjoy a superior status, the occupier of which, without labouring with his own hands, was supported by the labour of others, would bring about similar results as to other portions of the land.

§20.—The permanent tenants settled in the village and were called *Khúdkásht Raiyats*, i.e., *raiyats* cultivating the land of their *own* village, or the village in which they resided.[2] The rights of this class have been often mistaken ; and they have themselves been confounded with the village

him ; another would take his holding to that chief's rival, in view of establishing a balance of power, lest the whole village should be absorbed by the first chief; a third would court the official protection of the *kánungo* ; a fourth would crave shelter from a Bramin of note, relying on his sacred calling to secure his possession ; a fifth would morgtage to a moneylender ; and a sixth might sell to a neighbouring capitalist ; and the result of all this would be that people of different tribes and persuasions varying in number from two to ten would gain, and did gain, a footing in those subdivided villages."—*Carnegy's Land Tenures*, pp. 5, 6.

[1] *Elphinstone's History of India*, p. 69.

[2] From *khúd*=own, and *kásht*=cultivation : sometimes erroneously interpreted "cultivating their *own land*," and so leading to the mistaken notion that they had hereditary proprietary rights.—See *Elphinstone's History of India*, p. 248 ; *Mr. Shore's Minute of 18th June* 1789, § 225 ; *Mr. Holt Mackenzie's Minute of 1st July* 1819, §§ 328, 399, 431, &c ; and *Carnegy's Land Tenures*, p. 40, on this and other points connected with their *status*. They are also called *chhapper-band raiyats* from which, and the antithesis of *paikásht*, the meaning is plain.

zemindars or proprietors whose lands they cultivated. This was no doubt due to the fact that while in some parts of the country, as for example, in Bundlekund, the village zemindárs were the actual cultivators; in other parts, they had acquired a superior status, and the manual labour of agriculture had come to be performed by tenants. Where the original settlers were numerous, and their descendants increased in numbers sufficient to cultivate all their culturable land, the cultivators would naturally be found to be the proprietors or village zemindárs. Where the land, of the township, was too extensive to be cultivated by the first settlers or their descendants, strangers would be introduced as tenants. Thus the state of things would naturally vary in different parts of the country. Hereditary rights of occupancy have been claimed for *khúdkásht raiyats*; while, on the other hand, it has been contended that they had no rights whatever, and could be ousted at the will of those whose lands they cultivated. The true state of things seems to have been this. When there was plenty of unoccupied land, and population was sparse, the competition was not amongst tenants for land, but amongst zemindárs for raiyats. Tenants once induced to settle in the village were fostered; and where the son was able to step into the father's place, the arrangement suited both parties too well for any doubt to be raised as to the course to be pursued upon the death of a tenant. Non-fulfilment of the conditions on which the land was cultivated, non-discharge of the Government dues or non-delivery of the proprietor's share of the produce, was the only ground which rendered it necessary to remove a tenant. Some landholders, indeed, conceived themselves to possess the power of ousting these tenants, in favour of other persons, who were willing to give a higher rent; but in a state of society in which rents were regulated by custom, not by competition, such new tenants did not often present themselves, and so the practical exercise of the power was not frequent. Thus, notwithstanding occasional instances of ouster, it gradually became usual, in the language of a later stage of development, not to evict *khúdkásht raiyats* so long as they paid their rent. Under a Government of absolute discretion, destitute of the modern appliances for legislation, *custom* was really the sole legislative power.[1]

[1]At 252 and following pages of *Selections from the Revenue Records of the North-West Provinces* published in 1866, will be found a number

§ 21.—The temporary tenants were generally residents of another or neighbouring village, who could not obtain in their own village as much land as they were able to cultivate : these were called *paikásht raiyats*,[1] or *raiyats* cultivating land *near* their own village. These have been held by all authorities to have no rights and to be mere tenants-at-will. They generally made more favourable terms, paid lower rates than the *khúdkásht raiyats*. Not having their habitations in the village, they were not so amenable to pressure, and could at any time abandon the land to which they had no particular attachment.[2] Amongst both these classes of raiyats, there were variations in the rates, due to several causes, one of the most important of which was that more favourable terms were given to high caste (ashraf) cultivators, such as Bramins, Cshatryas, Kaysths.[3] The amount of this consideration varied, and was sometimes sufficient to enable the favoured individual, if above manual labour, to keep a servant to do the work of cultivation. Thus we get a class of labourers, who were sometimes slaves when servitude was customary and legal.

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of opinions on this point. The best authorities are pretty well agreed that these tenants could not transfer their rights, *i.e.*, sell their land—this privilege belonging to the zemindár class alone. The *khúdkásht raiyat's* interest or the right of occupancy, into which modern legislation has turned it, has, of late years, become not uncommonly saleable in the Lower Provinces. The Courts indeed hold that it is not saleable as of right, though it may become so by custom. The evidence offered in disputed cases, very often consists of instances, in which the landlord has brought the *raiyat's* interest to sale in execution of a decree for rent. This is a mode of obtaining, through the intervention of the Courts, fine which goes in payment of the arrears of rent due from the late tenant. That the *raiyat's* interest finds purchasers is an indication of a change having for its ultimate result the substitution of *competition* for *customary* rents.

[1]From *pai* (corruption of *pahi* from *pah*=*pas*, near) "living near," "non-resident," and *kásht*=cultivation.

[2]In many parts of Bengal in which the Author has had experience the contrary is now the case. Population has commenced to bear upon the soil, and a certain degree of competition for land has been the result. Outsiders will thus pay higher rents than the old residents, who enjoy a certain amount of consideration. The protection given by our laws to those who have held for a certain time has also helped to produce this result.

[3]Section 20 of the North-Western Provinces Rent Act (XVIII of 1873) now enacts that in determining the rate of rent payable by a tenant, his caste is not to be taken into consideration, unless it is proved that by *local custom* caste is taken into account in determining such rate.

§ 22.—We have thus four classes in the Village Community, *viz.* :—(1) The village zemindárs : (2) permanent tenants or *khúdkásht raiyats* : (3) temporary tenants or *paikásht raiyats* : and (4) labourers. It remains to add a fifth, whose influence in later times very considerably affected the structure of the little constitution. These were the shopkeepers or dealers in grain and other commodities. The thrift which seems to spring from the pursuit of trade in all countries and which in India is by no means a prominent natural feature of the great mass of the people, soon made the village shopkeeper the sole capitalist in the community. To him resorted the cultivator whose cattle had been carried off by murráin, or who was prevented by sickness from tilling his land ; who wanted funds for his own marriage expenses or for the funeral ceremonies of his father or mother or brother ; whose store of food had run short, or whose seed grain was deficient. The accommodation afforded was repaid in harvest-time with the produce of the soil, and the trader's store of grain increased. When the former or the latter rain failed, and drought brought famine, it was the grain-dealer's stores which saved the cultivators and their wives and their little ones and their cattle from perishing ; and, when they went to him that they might live and not die, he made his bargain with them before he filled their sacks with corn, as Joseph is said to have done with the Egyptians.[1] When invading armies passed by or marauding freebooters came upon the village, and the Headman and the zemindárs were called upon with severity, it may be with torture, to supply their wants and demands, the grain-dealer with his ready capital of grain or of money could alone afford the wherewithal to assuage their urgency and save the village from indiscriminate pillage. It happened betimes that those who made right by might, put aside the village zemindárs and their Headman, and substituted for them the persons who could for the time satisfy their exactions. Or in times of less open disturbance, when supersession was threatened by those who collected the Government dues and limited the royal demands and their own by no rule save the power of endurance in the oppressed, the *zemindárs* were driven to satisfy exaction by borrowing from

[1]Profane history relates that during the famine in Egypt, Joseph obtained from the Egyptians a surrender of their rights in the land to the king, as a condition of supplying their wants from the stores of grain in the royal granaries. If a share of the produce was the kings revenue in Egypt, the existence of these stores is at once explained.

the only one who could lend, and a part of their rights was mortgaged or sold to save a remnant, which on a repetition of oppression and exaction was sure to pass by a similar process to other hands. And so the petty shopkeeper developed into the grain-dealer and capitalist of the community, and became the great man, the *Mahajan* of the Village.[1]

§ 23.—The system of collecting the revenue in kind from the Headman of each village was manageable only when the domain of the State was limited in extent. As petty states were amalgamated by conquest or otherwise, and as the country gradually approached the condition of a single Government under a single sovereign, it became absolute by necessary to change a state of things so primitive and ill-suited to further stages of progress. Coin was scarce; and, where a circulating medium did exist, it circulated very slowly by reasons of its paucity. The laws of value and exchange had no operation, for the great commercial machine whose motion they govern was not in being. Powerful chiefs or sovereigns, to the maintenance of whose power large armies were necessary, were unable to pay them in money, for money did not exist in sufficient abundance; and so they assigned them for their support the royal revenue claimable from specified tracts of territory, not infrequently conquered territory, in which as a matter of necessity they were quartered with their leaders: or the assignment was made on a district near which they were already stationed. In course of time these leaders acquired a local position and importance, and their family taking root in the locality became the germ of an aristocracy between the cultivators and the sovereign. Similar grants were made for the support of civil officers, for the maintenance of temples and of holy men, for the reward of public service, in fact generally to meet the cost of the different departments of the Government, and moreover not infrequently in the exercise of royal munificence to favourites. The grants of one ruler were often resumed by his successors, or threatened resumption was avoided by the payment of such an amount of revenue as left the grant still worth possessing by the grantee or his descendants. It must be carefully borne in mind that what was assigned in all these

[1] *Mahajan* means literally 'a great man,' but is now the common term throughout the Presidency of Bengal by which the village money-lender or banker is known.

cases was not the land itself, but the right to collect the Government revenue. Misapprehension on this point has led some to suppose that these grantees were originally landed proprietors.[1]

§24.—Many of those to whom these assignments were made, more especially the ministers, the great officers of the household, and personal attendants of the Prince, did not or could not leave the person of the sovereign to reside upon their grants and themselves engage in the task of collecting the revenue: and so it became usual to make over this task to some one who undertook to perform it for a percentage on the collections. More commonly the arrangement was one known as *mustájiri*, or "farming" under which the farmer agreed for a certain sum, all that he could extract from the cultivators above this sum being his own profit upon the transaction. That portion of the royal domain which was not the subject of assignment came to be farmed in the same way: and, as the stock of precious metals increased, and money came more regularly into use, this system of farming the public revenue became very usual, the farmer collecting in kind and making the conversion into specie for transmission to the Government Treasury an additional source of profit.[2] Successful farmers, who could contrive to make themselves useful to Government, were seldom disturbed in their charges; and as was the propensity with all things Indian, their position became in many instances hereditary: and here was another source of a class standing between the sovereign and the cultivators.

§ 25.—Then there were, in the natural course, of things, many petty chiefs who had acquired a local position and influence before they came in contact with a stronger power to which they succumbed, and in which they were absorbed. Though not strong enough to resist absorption, they were yet able to make terms, and, retaining their former relation to those below them, they acknowledged a sovereign over them by the payment of revenue. The custom of the Rajpúts presented some peculiar features. The founder of a State reserved a certain portion of the territory for himself, and divided the rest among his relations according to the Hindú

[1]For an account of similar grants or *jagirs* made by the Mogul Emperors, see *post*, § 54.

[2]This system in the Roman Provinces was similar. The *publicanus* who farmed the Roman taxes had his counterpart in the Indian *mustájir*: and there was a rare similarity between the practices of both.

law of partition. The recipient of each share owed military service and general obedience to the Chief, but exercised unlimited authority within his own lands, which he divided on similar terms between his relations. A chain of vassal chiefs was thus constituted, to whom the civil and military administration was committed.[1] In these and other ways there came to exist between the sovereign and the village zemindárs a class of aristocracy variously known as *Rajas* and *Talúkdárs*, the exact nature of whose rights puzzled the first English administrators of the country in no slight degree.

§ 26.—The collection of the revenue and the tenure of land were so inseparately connected, that the Company's servants, immediately on undertaking the government, to carry on which the collection of revenue was necessary, were brought face to face with the problem of the tenure of land. To solve this problem was an indispensable preliminary to the introduction of that order and system which are of the essence of British Government. Law, then as now, formed no portion of the liberal education of an Englishman. Even those who studied law as a profession were conversant only with the technicalities of a system, which, so far as it is concerned with land or real property, is perhaps the most technical the world has ever seen. Thus few men possessed, with reference to this particular subject, that breadth of view and comprehensive grasp, which are derivable from the knowledge of other systems, and may be acquired by the study of comparative jurisprudence. And so it happened that to English gentlemen—possessed of marvellous energy, great ability, the highest honesty of purpose, and spotless integrity, but destitute of that light which alone could have guided them to the truth—fell the task of solving this problem : and the solution appeared to them to depend upon the answer to this question—"Who owns the land"?

§ 27.—These gentlemen had, some of them, estates in England: and those who are themselves possessed of no landed property, had been familiar from their boyhood with the estates of the English aristocracy and gentry ; and perhaps hoped, as the result of their labours in India, to become owners of similar estates in their own country in the evening

[1] *Elphinstone's History of India*, pp. 76, 250. See also *Campbell's Modern India and its Government*, p. 81.

of their days. From the point of view suggested by their knowledge and associations, they thought that some class in India must own the land in the same way as English landlords own their estates, and they set themselves to find out who this class were—in fact to answer the question—"Who owns the land?"[1] Now the fact really was that no class

[1]As a matter of fact, no one ever did or can *own* land in any country, that is, in the sense of absolute ownership—such ownership as a man may have in moveable property, for example, a cow or a sheep which may be stolen, killed and eaten, or a table or chair which may be broken up and burnt. Land is immoveable, indestructible. No man, however, feloneously inclined, can run away with an acre of it. The Maratta freebooter and the Pindari marauder were alike powerless to carry it off.—See *Williams on the Law of Real Property*, pp. 1—20, who, after remarking upon the erroneous notions too generally entertained amogst non-professional persons upon the subject of property in land, goes on to say :—

"The thing then the student has to do is to get rid of the idea of absolute ownership. Such an idea is quite unknown to the English law. No man is in law the absolute owner of lands. He can only hold an estate in them." If the laws of our country formed part of a liberal education, these erroneous notions would not prevail. The Author once travelled home from India with an English land-*owner*, who had made the tour of the globe to study the different tenures of land in various countries, but who was absolutely horrified at being told that no man could be the absolute owner of land, and that no man was so in England. There is reason to believe that the first administrators of the Company's territory in India had similar vague notions of the law of real property in their own country. A very strong indication of this is the use of the word "*estate*," which in legal phraseology means the quantity of interest in reality owned by an indivudual, the aggregate of the rights over land vested in a particular person. The dimensions of this interest may vary very considerably, *e.g.*, an estate for life, an estate-tail, an estate in fee-simple, none of which phrases carries the idea of owing the land itself.

One estate may be carved up into several ; thus an estate in fee may be cut up into several life-estates. In popular phraseology the word "estate" is applied to the land itself, and this is the way in which it was applied in India by the first administrators, and has continued to be applied down to the present hour.—(See the Bengal Regulations *passim*, more especially cl. 2, s. 2, Reg. XLVIII of 1793 ; cl. 2, s. 2, Reg. XIX of 1795 ; s. 1, Act VII (B.C.) of 1868 ; and Mr. Holt Mackenzie's Minute of 1st July 1819, § 562A.] Had they started with the right use of the word, they would have not searched for an ownership which they never found, because no such thing ever existed ; but would have sought to discover what were the "estates" in land in India ; and it would soon have been clear to them that no estates existed similar to those in England ; that the carving was in fact done on a different principle, the thing cut up being the same in both countries, but the English system of cutting being different, more exact and intricate.

or members of a class owned the land or any portion of it in the sense in which an Englishman owns his estate; the ideas of property in land were wholly different in the two countries:[1] and there was in India no kind of ownership which corresponded with that aggregate of rights, the highest known to English law, and which is termed a fee-simple.

§ 28.—The provinces of Bengal, Bahár and Orissa were the first territories in which the solution of the problem was attempted. In these provinces there were at the commencement of our rule a class of persons called "*zamindárs*," as to whose position and rights there was then, and has ever since been, the greatest doubt and discussion. No attempt to define their position and rights could now possibly succeed, and this for two reasons. In the first place, the new status which we gave them by the Permanent Settlement in 1793 has effaced many of the traces of the previous state of things. The old foundations are buried beneath the new structure. In the second place, it may be doubted if their position and rights were ever capable of exact definition. Under an arbitrary system of Government, where so much depended upon the will of the Ruler, rights were not demarcated by metes and bounds as they are under a systematic constitution like that of Great Britain. There are, however, some facts relating to these zamindárs, which are tolerably clear, though there may be a difference of opinion as to the proper conclusions to be drawn from them.

§ 29.—The first of these facts is that the Bengal zemindárs were something wholly distinct from the village zemindárs of whom we have been speaking, and more nearly resembled the talúkdárs of Upper India. In the North-Western Provinces the talúkdár was superior and the zemindár inferior.

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[1] "There seems to be the heaviest presumption against the existence in any part of India of a form of ownership conferring the exact rights on the proprietor which are given by the present English ownership in fee-simple."—*Mane's Village Communities*, p. 160. I would go further and say that it is positively certain that no such assemblage of rights ever existed or was known in India. History, it is true, repeats itself but not in this way; and it would have been an extraordinary repetition of the concurrence of those accidental circumstances which created the English fee-simple, that could have produced an exactly similar result in India. The ability of Mr. Holt Mackenzie saw this source of error also, though he did not grasp the whole point as he would undoubtedly have done, if his mind have been trained by the study of jurisprudence—*See* his *Minutes*, §§ 389—393, 473.

The reverse was the case in Bengal.[1] The talúkdár was subordinate to the zemindár, where any relation existed between them. Some large talúkdárs, indeed, paid their revenue direct to Government and were independent of the zemindár; but in no case was the zemindár subordinate to the talúkdár. The Bengal zemindárs,[2] as we found them,

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[1]The word *talúk*, *talúka* is derived from the Arabic word '*alak*', which signifies 'to hang from,' 'to depend upon' (*alak* also means aleech, which hangs from the body to which it has attached itself and has another quality said to have belonged also to the *talúkdár*) and means connexion, dependence. In Upper India, the *talúk* was dependent upon, subordinate to the sovereign. In Bengal, the *talúk* was subordinate to the *zemindári*, but not always. The larger *talúkdárs* were *huzúri*, *i.e.*, they were immediately under the Supreme Government, to which they paid their revenue direct; while the smaller ones were *mazkúri* or specified, *i.e.*, in the *sanad* of the zemindár, through whom they paid their revenue. Doubtless all were originally *huzúri*, but when the revenue came to be collected through the *zemindárs*, the smaller *talúkdárs* were directed to pay their revenue through this channel in order to avoid the inconvenience of a multiplicity of small payments into the Khalsa or treasury of the State. As to the different use of the words *zemindár* and *talúkdár* in different parts of the country, see *Mr. Holt Mackenzie's Minute*, §§ 110, 395—400, 459; *Carnegy's Land Tenures in Upper India*, p. 68 and following pages; *Wilson's Glossary*; Regs. VIII of 1793 (especially ss. 5, 6 and 7) and II of 1805 (cls. 1 and 2 of s. 17); and *Mr. Shore's Minute of 2nd April* 1788 near the end.

[2]"Most of the considerable zemindárs in Bengal may be traced to an origin within the last century and-a-half. The extent of their jurisdictions has been considerably augmented during the time of Jáfier Khan, and since by purchases from the original proprietors, by acquisitions in default of legal heirs or in consequence of the confiscation of the lands of other zemindárs. Instances are even related in which zemindáris have been forced upon the incumbents."—*Mr. Shore's Minute of 2nd April* 1788. "Since the decline of the constitution in the reign of Farokhsír and the introduction of the *farming system* at the recommendation of Rattanchand, when corruption pervaded every department of the State, the unprincipled *zemindárs*, by ingratiating themselves with the amils or rulers for the time being, distressed the inferior zemindárs by every possible mode, until they were reduced to the necessity of selling their zemindáris to their oppressors, who thence forward became by virtue of usage, not of right, the acknowledged proprietors of them. Other zemindárs, having desolated their lands by mismanagement and dissipation were obliged by the ruling power to dispose of them to more prudent and opulent zemindárs for the liquidation of their balances. The title of the purchasers of such land was considered good and valid. Towards the close of the reign of Mahomed Sháh, during the administration of Ramnarain and Jankiram and other Názims of the Bahár Province, certain zemindárs by attaching themselves to these officers acquired great influence, and either by force or under different pretences, unjustly possessed themselves of the estates of the inferior

were the persons who collected the revenue from the cultivators and other subordinate holders, and were responsible

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landholders, till at length becoming rich and powerful through connivance of the Názim, who permitted these usurpations, they declared themselves the proprietors of the lands thus unfairly acquired. It was by the above modes that many zemindárs of this province augmented their possessions. From being proprietors of a *talúk*, they became possessors of a *pargana*; and from possessors of one *pargana*, they became possessors of many."—*Answers to Questions put to Ghulam Hosen Khan, the Historian, son of Fakhar-Ud-Daulah, formerly Názim of Bahár.* Mr. Shore, in his Minutes of the 2nd April 1788 and 18th June 1789, says that the origin of the proprietary and hereditary rights of the zemindárs is uncertain; that in Akbar's time the zemindárs of Bengal were numerous, rich and powerful; that they were not of his creation, and probably existed with somepossible variation in their rights and privileges before the Mahomedan conquests in Hindustan and, without any formal acknowledgment acquired stability by prescription. He infers that the new invaders who claimed the revenues of the country, from motives of policy and humanity, employed the ancient possessors of the land as their agents for the collection of the taxes of the State, superadding the jurisdiction exercised by the Collectors of revenue in their own system of finance; and that, for this purpose, they confirmed the former proprietors by *sanads* or grants conferring offices of an inheritable and permanent nature. He does not consider the *sanad* to be the foundation of the tenure. In *Appendix No.* 15 *to Mr. Shore's Minute* will be found an account of the origin and descent of the zemindárs of Rajshaye, Dinajpore, Burdwan, Nadia, and Lushkorpore, showing that the *zemindári* descended in these families. "Zemindáris," says the Rairaiyan in his answers, "are of various kinds. Some are obtained by inheritance, some by clearing the country of wood, some by the ejectment of the former possessor for ill-behaviour, some by purchase, and some in trust. Some are large and some are small." In dealing with the argument drawn from inheritance, it may be well to remember that under native rule a *zemindári* did not descend in exact conformity with the Hindu and Mahomedan law inasmuch as it descended *intact* to one heir and was not subdivided. Reg. XI of 1793 abolished this "custom originating in considerations of financial convenience, established under the native administrations, according to which some of the most extensive zemindáris are not liable to division." Mr. Harington gave Lord Cornwallis in 1789 the following definition of a Bengal zemindár as he existed before our rule; and, writing 28 years afterwards, he said he saw no reason to alter it:—"A landholder of a peculiar description not definable by any single term in our language—a receiver of the territorial revenue of the State from the *raiyats* and other under-tenants of land—allowed to succeed to his zemindári by inheritance, yet in general required to take out a renewal of his title from the sovereign or his representative on payment of a *pishcush*, or fine of investiture, to the Emperor, and a *nazarána*, or present, to his provincial delegate the Názim—permitted to transfer his *zemindári* by sale or gift; yet commonly expected to obtain previous special permission—privileged to be generally the annual contractor for the public

for paying it into the Government Treasury. They were no doubt in many instances *rajas* or chiefs, or persons otherwise possessed of local importance and influence. which the Mahomedan *súbahdárs* utilized for the collection of the revenue, and which were augmented and extended by being thus called into active exercise, supported by the authority of Government. Where no such persons existed, the want was supplied by appointing some of the numerous candidates who were ready to give a handsome consideration for a position which afforded great opportunities of profit.[1] Once the practice

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revenue receivable from his *zemindári*; yet set aside with a limited provision in land or money, whenever it was the pleasure of Government to collect the rents by separate agency or to assign them temporarily or permanently, by the grant of a *jagir* or *altamgha*—authorised in Bengal since the early part of the eighteenth century to apportion to the parganas, villages, and lesser divisions of land within his *zemindári* the *adwáb* or cesses, imposed by the *súbahdár* usually in some proportion to the standard assessment of the zámindári established by Todar Mal and others ; yet subject to the discretionary interference of public authority either to equalize the amount assessed on particular divisions or to abolish what appeared oppressive to the *raiyat*—entitled to any contingent emoluments proceeding from his contract during the period of his agreement ; yet bound by the terms of his tenure to deliver in a faithful account of his receipts—responsible, by the same terms, for keeping the peace within his jurisdiction ; but apparently allowed to apprehend only and deliver over to a Musalman Magistrate for trial and punishment."—(See also *Campbell's Modern India*, pp. 78—81.) The account of receipts was not always a very faithful one. The *Jama-wasil-baki* paper (see the Author's *Law of Evidence*, p. 553) prepared at the end of the year from the actual accounts of the year is said to have been invented by Udhmant Singh of Nussipúr in the district of Múrshedabád in order to enable the accounts of receipts to be rendered in the manner most suited to the zemindár. It is said that even at the present day the *amlah*, or employees, of many zemindárs prepared two sets of those papers—one correct, for their own use—the other drawn out as may be most suitable for use in Court.

[1]In order to understand exactly what the sources of profit were it must be borne in mind that the zemindár (or talúkdár in the North-Western Provinces) paid a fixed sum to Government. This sum was revised occasionally, but it was fixed for the time being. All beyond this sum, that could be exacted from the subordinate holders, was clear gain. Improved agriculture, the cultivation of further portions of waste land, the discovery of land held revenue-free without right, the imposition of cesses (*adwáb*)),the levy of customary fees, and the possession of *nir* land, as the home-farm or lord's demesne of the zemindár was called, were all sources, which, worked with arbitrary and too often lawless discretion, yielded a very considerable income. What the zemindár paid to Government was fixed : what he was to take from the *raiyats* was not fixed. "The institutes of Akbar show," says Mr. Shore, "that the

was introduced of making money out of the appointment of *zemindárs*, it became the most natural thing possible to exact a sum by way of fine or *nazarána* upon every accession to the position, even in the case of the heirs of the *zemindárs* of the former class, in whose family their rights had been hereditary before the existence of the Moghol power. Persons who had undoubted rights of succession found it expedient to comply with the demands of those who had it in their power to put these rights aside ; and the heirs of those whose *sanads*, or patents, were not a generation old, were too willing to pay for succeeding to a position to which they had not a shadow of a title other than the will of the ruler.[1]

§ 30.—Those who looked chiefly at the one class of zemindárs were convinced that a *zemindári* was an hereditary proprietary right in the soil, very similar to, if not identical with, an Englishman's right in his estate. Those who confined their attention to the latter class contended that it was

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relative proportions of the produce were settled between the cultivator and the Government ; yet in Bengal I can find no instances of Government regulating those proportions." Mr. Carnegy arrived at the same conclusion in Oudh.

[1]See a *Note on the Mode of Investing a Zemindár, Appendix No.* 9 *to Mr. Shore's Minute of* 2*nd April* 1788. The zemindárs of Nádia, Bardwan, Dinajpore, and formerly of Bishenpúr. Pachete, Birbhum, and Roshanabad, were instances of the first of the above classes—see the *Rairaian's Answers, Appendix No.* 17 *id.* The succession of the latter, especially where powerful, was no doubt assisted by the growing weakness of the Mogul power. Exactly the same thing happened in respect of the ancient *benefices* in Europe—see *Hallam's Middle Ages*, vol. i, pp. 160 and 172. In the last place Mr. Hallam says :—"Some writers have accounted for reliefs in the following manner :—Benefices, whether depending upon the crown or its vassals, were not originally granted by way of absolute inheritance, but renewed from time to time upon the death of the possessor, till long custom grew up into right. Hence a sum of money, something between a price and a gratuity, would naturally be offered by the heir on receiving a fresh investiture of the fief, and a length of time might as legitimately turn this present into a due to the lord, as it rendered the inheritance of the tenant indefeasible. This is a very specious account of the matter. But those who consider etc.....will perhaps be led rather to look for the origin of reliefs in that rapacity with which the powerful are ever ready to oppress the feeble. The same may be said of Bengal zemindárs, the difficulty of arguing as to whose *rights* at all will appear from the following sagacious remarks of Mr. Shore—"The constitution of the Mogul Empire, despotic in its principle, arbitrary and irregular in its practice, renders it sometimes almost impossible to discriminate between power and principle, fact and right ; and, if custom be appealed to, precedent in violation of it are produced."

but an office; and when pressed with instances of regular succession, replied that it was the tendency of all offices to become hereditary under the particular system. The holders of the latter opinion argued that the principle of dividing the produce with the cultivators annihilates the idea of a proprietary inheritable right—that the existence of the *sanad* proves investiture essential—that a *zemindári* is expressly called a *service* in the *sanad*, the terms of which assign duties but convey no property—that a fine was paid to the sovereign as a preliminary to investiture—and that security was taken for the personal appearance of the zemindár,—all which are inconsistent with the notion of a proprietary right in him. Those who maintained the former view replied that the State claimed merely a *share* of the rents or produce, and this was not incompatible with the existence of proprietary right—that a *zemindári* was inheritable by usage and prescription, the force of which are admitted in all countries, when derived from principles of natural right and conformable to right reason—that the *sanad* was never conferred at discretion upon an alien to the exclusion of the heir and was properly construed as confirming existing rights, not as creating new ones—that it was only the principal zemindárs who asked or received *sanads*, while the inferior zemindárs succeeded according to their own laws of inheritance—that the use of the word *service* in the *sanad* proved nothing, when the tenure was found to be hereditary, and property depending upon service in its inception may have become by usage hereditary[1]—that the *nazarána* paid on investiture was probably an exaction, or ought, at any rate, to be regarded as a fine for the renewal of an estate—that the *Krori* and *Amil*, both holding an office concerned with the collection of the revenue, paid no *nazarána*, and did not succeed by inheritance—that in a country subject to frequent revolutions in which the zemindár as often took part against the Government as with it, the security for personal appearance was merely a device to keep them to their allegiance—that the *sanad* contained no term, and the obvious inference was that the tenure was to continue so long as the conditions of the grant were observed.[2]

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[1]The history of other countries and indeed of India itself supports this argument.

[2]*Mr. Shore's Minute of the 2nd April* 1788.

§ 31.—The arguments on neither side being conclusive, the question of policy[1] or expediency was introduced to turn the scale. Having a patriotic respect for the blessings enjoyed by Englishmen and for the institutions which were the source of them, both sides believed that the same blessings would be secured for India, if the same institutions were planted there. Thus, when it was argued that, if the zemindárs were not landowners in the English sense, they ought to be made so, they who stoutly maintained the negative side of the general question were not prepared to gainsay a proposition, to question which would have been to doubt the excellency of those institutions which have always been the boast of every Briton ; and they were perhaps secretly not disinclined to compromise a controversy in which victory seemed inclined to declare for neither party. And so it was determined to remove all those tenements which had come into existence under a system—arbitrary indeed and uncertain, but never wholly condemning custom so far as to sweep away at one stroke every vestige of what it had erected—and by their removal clear the ground in order to create English estates. The Bengal zemindárs were declared proprietors[2] of the estates thus called into being—in name and upon paper ; but though the power of Government could clear the site and demolish all that stood thereon, it could not lay it out anew after the exemplar which was present to the mind of the noble statesman, under whose auspices this well-meant attempt at improvement was made.

§ 32.—"Never," wrote Lord Hastings in his Minute of the 31st December 1819, "was there any measure conceived in a purer spirit of generous humanity and disinterested justice, than the plan for the Permanent Settlement in the Lower Provinces. It was worthy the soul of a Cornwallis : yet this truly benevolent purpose, fashioned with great care and deliberation, has, to our painful knowledge, subjected almost the whole of the lower classes throughout these provinces

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[1]"The General question may with propriety be divided into two parts—of right and policy."—*Mr. Shore, id.*

[2]The proprietary right conferred by the Permanent Settlement was really an estate (in the legal sense) of much greater dimensions than an English fee-simple. Not only were all other estates destroyed to create it ; but, by the device of the Sale Law, as often as the Government revenue (land-tax) was not paid, all subordinate estates, created since the Permanent Settlement, were annihilated, and the higher estate handed over to its new possessor free of encumbrance. A system which

to most grievous oppression—an oppression, too, so guaranteed by our pledge that we are unable to relieve the sufferers.[1] One of the effects of making the zemindárs proprietors and fixing for ever the Government demand of

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thus interfered with the transferability of land, save under one condition and prohibited the creation of such new rights as convenience suggested must have been a fatal barrier to progress, and this actually proved to be the case. When we come to the history of the Sale Law in Bengal, we shall see how this barrier had to be broken down.

[1] Lord Cornwallis was alone responsible for making the settlement permanent upon the information possessed at the time and without adequate provision for protecting the rights of the *raiyats* and other subordinate holders. On both these points he acted in opposition to the opinion of Mr. Shore (afterwards Lord Leignmouth) for whom he had, however, the greatest admiration and respect—See *Mr. Shore's Minute of the 18th September* 1789 (§§ 68—72); *Lord Cornwallis's Minute of the same date*; *Mr. Shore's Minute of the same date in reply*; *Mr. Shore's Minute of the 21st December* 1789 *and Lord Cornwallis's Minute of the 10th February* 1790, *Appendix to vol. i of the Fifth Report*, pp. 555—609. Mr. Shore argued that whatever confidence they might then have in the propriety of the measure they could not pronounce absolutely upon its success without experience, and that before recommending its perpetual confirmation, they ought to have that experience. He was in favour of the rights of the zemindárs—his arguments on this point convinced Lord Cornwallis—and he did not think that any increase of the then revenue was to be expected. The experience of less than twenty years disproved both views. A great mistake would have been avoided, if his advice had prevailed, which counselled to wait for the results of further experience. In advocating the necessity for interposition between the *zemindárs* and the *raiyats*, he pointed out that the situation of things we found was singularly confused—that the relation of a *zemindár* to Government and of a *raiyat* to a *zemindár* was neither that of a proprietor nor a vassal, but a compound of both—that the former performed acts of authority unconnected with proprietary right, the latter had rights without real property—that the property of the one and the rights of the other were in a great measure held at discretion—that such was the system we found and were under the necessity of adopting for that present—that much time must elapse before a system perfectly consistent in all its parts could be established, and the compound relation of *zemindár* to Government and *raiyat* to *zemindár* be reduced to the *simple principles of landlord and tenant*. He added that he for his part was not ashamed to distrust his own knowledge as he had frequent proofs that new enquiries led to new information. These remarks display much of the cautious wisdom of a true statesman. One important piece of information which subsequent enquiries have afforded us is that *competition rents* did not exist in India: and that, where *customary rents* alone prevail, the principles of landlord and tenant are anything but simple. Lord Cornwallis was convinced that if the zemindárs were made proprietors subject to the payment of a fixed revenue or land-tax, they would of themselves and for their own interest adjust the relations between them and their *raiyats* on

revenue was that all other rights in land were so completely effaced that at this present hour it is difficult to find a single vestige of them or to ascertain what they were. Mr. Holt Mackenzie, in his celebrated Minute written in 1819, expressed an opinion that the resident (*khúdkásht raiyats*) of Bengal were originally of the same class with the village zemindárs of the North-Western Provinces but even *then* it was speculation merely, so ecectually had the work of demolition been accomplished. The rights which now exist in land in the Lower Provinces of Bengal are nearly all of recent creation, dating from or after the Permanent Settlement of 1793. When I come to trace the history of the Sale Law in these provinces, I shall point out how intimately the creation of existing rights is connected with that history. Meanwhile the following outline may be useful to the student.

§ 33.—The largest estate or assemblage of rights in land in the Lower Provinces of Bengal is a *Lakhiraj* or revenue-free tenure.[1] This tenure may be generally described by saying that it possesses all the incidents and advantages of a *zemindári* tenure, with this additional one that, as it pays no revenue to Government, it is not liable to sale for arrears of such revenue. One important consequence of this non-liability to sale for arrears is that there is no statutory mode of avoiding incumbrances once created by the *lakhirajdár*.

§ 34.—A *zemindári tenure* is an absolute right of proprietorship in the soil, subject to the payment of a fixed amount of revenue to Government. If this revenue fall into arrears, the estate[2] may be put up to auction and sold to the highest bidder. The purchaser acquires the estate free of all incumbrances created since the time of the permanent settlement and obtains

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satisfactory footing, and that enough would be done, if the right of interference, should it be necessary, were retained. The result has shown how grievously he was mistaken. The right of interference was reserved (cl. 1, s. 8, Reg. I of 1793), but it was not exercised until 66 years after (when Act X of 1859 was passed), and it was then too late.

[1] For further information as to this tenure, see Regs. XIX and XXXVII of 1793 and the notes thereto. The student might well read these here. *Lakhiraj* is derived from *la*=not, and *khiraj*=tribute, revenue; and means land which does not pay revenue to Government. This estate is also found in the North-Western Provinces (see ss. 3, 85, 86-89, 103 and 241 of Act XIX of 1873).

[2] An "estate" means any land or share in land occupying a separate number in the Government register of revenue-paying estates—See s. 1, Act VII (B. C.) of 1868.

a statutory title.[1] A *zemindári* is inheritable according to the law of succession by which the proprietor is governed. It is assignable in whole or in part. It may be mortgaged. The zemindár can grant leases either for a term or in perpetuity. He is entitled to rent for all land lying within the limits of his *zemindári*, and the rights of mining, fishing, and other incorporeal rights are included in his proprietorship.[2]

§ 35.—There are in the Lower Provinces of Bengal a variety of tenures held under the zemindárs and known by different names in different districts. The most important of these tenures are *talúks*. Some of these have existed from before the permanent settlement ;[3] and are known by the generic term of *Shikami*[4] or dependent *Talúks*. The rent at which they are held cannot be enhanced unless upon proof (1) of a special right by custom to enhance, or (2) of a right depending upon the conditions of the grant, or (3) that the *talúkdár*, by receiving abatements, has subjected himself to increase, and that the lands are capable of affording it.[5]

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[1]The Landed Estates Court in Ireland gives a similar title—See 23 & 29 Vict., c. 88, and 29 & 30 Vict., c. 99. Similar titles were given in the West Indies and in Australia ; and within the last few years the Legislature has been occupied with the same subject for England—See *Macnevin's Practice of the Incumbered Estates Court in Ireland* ; *Cust's Treatise on the West Indian Incumbered Estates Court* ; *Gough's Manual of Practice in the Office of Land Registry* (*England*), and *Torren's Registration of Title* (*Australia*).

[2]Mr. Harington gives the following definition of a *zemindár* as constituted by the Permanent Settlement : " A landholder, possessing *zemindári* estate which is hereditable and transferable by sale, gift, or bequest ; subject under all circumstances to the public assessment fixed upon it ; entitled after the payment of such assessment to appropriate any surplus rents and profits which may be lawfully receivable by him from the under-tenants of land in his *zemindári* , or from the cultivation and improvement of untenanted lands ; but subject nevertheless to such rules and restrictions as are already established, or may be hereafter enacted by the British Government for securing the rights and privileges of *raiyats* and other under-tenants, of whatever denomination, in their respective tenures, and for protecting them against undue exaction or oppression. "

[3]See sections 6, 7, and 8, Regulation VIII of 1793.

[4]Derived from *shikm* = " the belly ": hence "subordinate," " dependent," " included." The same class were in the old *zemindári sanads* denominated *mazkúri talúks*. A *shikami talúk* cannot be created now, or at least no creation is ever made. The term is properly used of those *talúks* which were in existence at the time of the permanent settlement, and were then left dependent on the zemindárs. Subsequent creations are usually founded on the *patní* principle.

[5]Section 51, Regulation VIII of 1793, and see *Mr. Shore's Minute of 28th June 1789, as to Rights of Under-tenants.*

If the rent has never been changed since the permanent settlement, it cannot now be enhanced:[1] and, in order to relieve the *talúkdár* in some respect of the difficulty of giving proof extending over a period of so many years, the law provides that, if it be proved that the rent has not been changed for twenty years, it shall be presumed, unless the contrary be shown, that the tenure has been held at the same rent since the permanent settlement.[2] *Patní*[3] *talúks* constitute another important class of subordinate tenures. The origin and incidents of this class will be found fully described in Regulation VIII of 1819 (*post*). Talúks of both classes are inheritable and transferable by sale or otherwise. The remedy for non-payment of rent is not by ejectment, but by bringing the *talúk* or tenure to sale. This practice was doubtless adopted from the Revenue Sale Law,[4] to which it bears a strong resemblance as well in other respects as in this, that the purchaser of the tenure is entitled to avoid incumbrances created by the defaulting proprietor. Talúks and similar tenures created since the time of the permanent settlement, and held immediately of the proprietors of estates may be protected by[5] registration from avoidance by a sale for arrears of revenue.

§ 36.—It became at an early period a common practice for the holders of talúks to sub-let their lands in whole or in part to inferior tenants on conditions more or less similar to those on which they themselves hold of the zemindár. These under-tenants occasionally sub-let to others in the same way, and so it has come to pass that there are several classes of middlemen between the *zemindár* and the cultivator. Considerable sums are paid by way of fine on the creation of both the parent and

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[1]See section 16 of Act VIII (B. C.) of 1869, and section 15 of Act X of 1859.

[2]See section 17 of Act VIII (B. C.) of 1869, and section 16 of Act X of 1859.

[3]The derivation of the word Patní is, according to Wilson, uncertain. Mr. Harington says it may be rendered "settled or established," which Professor Wilson pronounces *very questionable*. There is a word "pattan" which I have met in several districts used of settling with, letting to, a tenant, which is doubtless connected with Mr. Harington's explanation.

[4]Act VIII (B. C.) of 1865 provides *for the sale of such Under-tenures as by the Title-deeds or established usage of the country are transferable by sale or otherwise for the recovery of arrears of rent due in respect thereof.*

[5]See Act XI of 1859 and *post*. §§ 131—137.

subordinate *talúks*.[1] Men who do not like to part with the status of zemindár by an absolute sale of the *zemindári* will readily enough raise money by allowing the proprietary right to be carved up into estates of minor value, the whole substance going into the hands of others, while the name alone remains to them. Inferior holders of tenures follow the same practice, and thus a very considerable class of mere annuitants has been created in Bengal, who have no interest in the land and its improvement. These annuities represent an increase of revenue which might have gone into the coffers of the State. One of the social results of this loss of revenue, has been the creation of a considerable Middle Class, which in all probability would not otherwise have sprung up so rapidly in a country possessing little or no manufacturing industry.[2]

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[1]In order to guard themselves from the danger of a sale for arrears of revenue or rent, it is usual for *talúkdárs* and undertenants to stipulate that they shall pay the head revenue or rent and deduct it from the amount reserved in the demise to them.

[2]This class have readily availed themselves of the educational advantages of our system. The great difference between Bengal and the North-Western Provinces in respect of a large educated middle class is doubtless due to the difference of the system of settlement. Capital is necessary to the existence of a middle class; and where there is little or no trade or manufacturing industry, capital available for expenditure without diminishing the principal can only exist in the shape of an annuity derived from land or from the funds. Opinions differ as to the policy of creating such a class. At the commencement of our rule, it was deliberately proposed as one of the great objects to be accomplished. Such a class had made England a great nation—institute a similar class in India and similar results must follow. At a later period this policy was doubted and to some extent disapproved. Mr. Canning, then President of the Board of Commissioners in a letter addressed in 1817 to the Chairman of the East India Company, stated four points upon which the Court and the Board were unanimous. One of these was,—"That the creation of an artificial class of intermediate proprietors between the Government and the cultivators of the soil, where a class of intermediate proprietors does not exist in the native institutions of the country, would be highly inexpedient." But again in a Dispatch (No. 14 of 9th July 1862) from the Secretary of State it was said, that "it is most desirable that facilities should be given for the gradual growth of a middle class connected with the land, without dispossessing the peasant proprietors and occupiers. It is believed that among the latter may be found many men of great intelligence, public spirit, and social influence, although individually in comparative poverty. To give to the intelligent the thrifty and the enterprising the means of improving their condition, by opening to them the opportunity of exercising these qualities, can be best accomplished by limiting the public demand on their lands. When such men acquire property and find themselves in a thriving condition,

§ 37.—*Istimrari* tenures are tenures granted in perpetuity. *Mukarrari* tenures are those granted at a fixed rent not liable to enhancement. Generally speaking, however, the two conditions are now found combined ; and where the term is in perpetuity, the rent is fixed for ever. These tenures, though not called *talúks*, differ little in their incidents therefrom. They are transferable and inheritable, and may be protected by registration[1] from the effects of a revenue-sale. Many tenures, the incidents of which were not exactly defined when they were created, have become *istimrari* and *mukarrari* by custom assisted by our legislation. Being allowed to descend from father to son without opposition, they have come to be regarded as *istimrari*, more especially after one or two transfers, and devolution by inheritance upon the heirs of the transferee. The law[2] declares that, where the rent has not been changed since the permanent settlement, it cannot be enhanced, and here also a statutory presumption has been brought in to facilitate the means of proof; and thus many tenures have become *mukarrari* which were not so in their inception. I believe that many tenures which were originally created in favour of cultivating *raiyats*, have, in the course of time, come to be treated as intermediate interests between the proprietors and the *raiyats*, the original grantee or lessee having sub-let and converted himself into a middleman[3] without remark or objection from the superior landlord.[4]

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they are certain to be well affected towards the Government under which they live. It is on the contentment of the agricultural classes, who form the great bulk of the population, that the security of the Government mainly depends. If they are prosperous, any casual outbreak on the part of other classes or bodies of men is much less likely to become an element of danger." These conclusions have been scarcely justified by some of the emanations of the Native Press, which is an offset of the middle class of our creation and education.

[1]See Act XI of 1859, and *post*, § 132.

[2]See sections 3, 4, 16 and 17 of Act VIII (B.C.) of 1859, and the corresponding sections of Act X of 1859.

[3]Mr. H. Colebrooke in his *Remarks on the Husbandry and Internal Commerce of Bengal* expresses an opinion that the origin of the tenures of the petty proprietors in Eastern Bengal is due to an extension of the rights of occupants from vague permanence to a declared hereditary, and even transferable interest.

[4]Notwithstanding the greatest efforts on the part of the Legislature, the general introduction of written leases never could be effected in Bengal, both parties having an invincible dislike to tie themselves down to written terms which would effectually prevent future attempts by

§ 38.—Passing from these intermediate tenures, the conditions and the law of which can scarcely be said to be very well or clearly known or settled, we come to the actual cultivators. The distinction of *raiyats* into *khúdkásht* and *paikásht* (*ante*, §§ 20, 21), is nowhere mentioned in the great Rent Act,[1] though it is alluded to as still existing in subsequent enactments.[2] The broad distinction now existing between the rights of the actual cultivators is solely the creation of Act X of 1859, which in effect divides them into those having a *right of occupancy*, and those having no such right and who are merely temporary tenants or tenants-at-will. Any *raiyat* who cultivates or holds land for a period of twelve years, whether under a written lease or not, acquires a right of occupancy in the land so cultivated or held by him, so long as he pays the rent payable on account of the same. The holding of his father or other person from whom a raiyat inherits is to be deemed the holding of the raiyat himself.[3] This last provision makes a right of occupancy inheritable, and though it is not by law transferable, there is a strong tendency in Bengal to make it so

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either party to circumvent the other. The *zemindár* did not like a written lease which might interfere with his levy of unauthorised cesses, and the *raiyat* was afraid that the consolidation of all demands in one lump sum would be only the creation of a new *asil* or original rent upon which to calculate fresh cesses, all cesses being generally an addition of so much in the rupee to the original rent. There was also a very general idea that the acceptance of a *patta* for a fixed term would diminish the force of that prescription which established a right of occupancy in the raiyat's favour. Even where writing has been used, the most ordinary contingencies are not provided for, and the writing really contains but part of the contract. There is no proper system of conveyancing in the Indian Mofussil. One cause of this doubtless is that there are no legislative provisions which require any class of contracts to be in writing. Where the interest created is of Rs. 100 in value, the writing must be registered. If writing have been used, but the use of writing is not compulsory. The general absence of writing and the incompleteness of the written contract, where such exists, render it extremely difficult to adjudicate upon rights when litigation takes place.

[1] Act X of 1859, the substantive provisions of which are re-enacted by Act VIII (B.C.) of 1869, with this difference that Rent Cases are, under the provisions of the latter Act, tried by the Civil instead of the Revenue Courts.

[2] See for example, section 16 of Act VIII (B. C.) of 1865.

[3] Section 6, Act X of 1859, and section 6, Act VIII (B.C.) of 1869.

by usage.[1] The rent of a *raiyat* who has held at a fixed rate since the time of the permanent settlement cannot now be enhanced: and the fixity of the rate will be presumed, in the absence of evidence to the contrary, from proof that it has not been changed for the last twenty years. The rents of *raiyats* having a right of occupancy can be enhanced only (1) if the rate paid by them is below the prevailing rate payable by the same class of raiyats for land of a similar description and with similar advantages in the places adjacent: (2) if the value of the produce or the productive powers of the land have been increased otherwise than by the agency or at the expense of the raiyat: or (3) if the quantity of land held by the raiyat has been proved by measurement to be greater than the quantity for which rent has been previously paid. Raiyats having a right of occupancy are protected in their privileges against a purchaser at a revenue sale.[2]

§ 39.—There are a few other rights connected with land in Bengal, which may be briefly noticed. Service tenures (*chakaran*) are found in some parts of the country, being a remnant of the old system under which public officers and even the servants of the village were paid by grants in land instead of by money salaries. Somewhat similar are the *Ghâtwali*[3] tenures found in Birbhúm and elsewhere, granted

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[1]There can be no doubt that the holding of a *khúdkásht raiyat* was not formerly transferable (see *Mr. Holt Mackenzie's Minute*, § 399; *Mr. Shore's Minute of 28th June 1789*, and *Mr. Harington's remarks written in 1789 as to the Rights of Under-tenants*). Mr. Harington considered (1) whether such holdings ought to be made transferable; and (2) whether the rent should be fixed; and answered both questions in the negative.

[2]Section 37 of Act XI of 1859. Some of the strongest arguments urged against the provisions of Act X of 1859 were that while ignoring the special privileges of *khúdkásht raiyats* and the existence of all rights depending upon custom, it conferred the same benefit upon *khudkasht raiyats*, who admittedly had privileges, and *paikasht raiyats*, who admittedly had none; and by giving an *ex post facto* operation to the right of occupancy provisions in respect of both classes, it did not allow landlords time to provide by contract against the acquisition by the latter class of a right to which they had not a shadow of claim before. In the case of *khúdkásht raiyats* the Legislature in giving a right of occupancy merely followed custom, the particular period of twelve years being borrowed from the law of limitation.

[3]*Ghât* means "a landing place," "the terminus of a ferry on either side of the river," "a mountain pass." *Ghâtwal* is a person in charge of a ferry or of a mountain pass. As to these tenures, see Reg. XXIX of 1814, *post*.

for keeping the mountain passes against the Maratta and other invaders. Leases of land whereon dwelling-houses, manufactories, or other permanent buildings have been erected, or whereon gardens, plantations, tanks, wells, canals, places of worship, or burning or burying grounds have been made, or wherein mines have been sunk, enjoy special privileges, and may be protected by registration against a revenue sale.[1] A *Khas Mahal*[2] is an estate held by Government standing in the place of the proprietor. Sometimes there is no proprietor, as in the case of waste land, or an island[3] thrown up in a large navigable river. Sometimes there is a proprietor, who has refused to accept the terms of settlement offered to him, and who is allowed *malikana*[4] while the estate is held *khas*. Estates held *khas* are sometimes managed by Government through its own servants; and sometimes let out in farm (*ijarah*). Small portions of *waste* land situate within the limits of permanently settled estates belong to the proprietors of such estates; but there are large tracts of waste land in Assam and other places which belong solely to Government. Portions of these latter are reserved for forest uses, for the growth of firewood,[5] and for similar purposes. Other portions are sold in lots to suit the convenience of purchasers who obtain a full hereditary and transferable proprietary right, free for ever from all demand on account of land revenue, but subject to all general taxes and local rates.[6] There are in India, as well in England, *incorporeal rights* in land; but, owing to the much less artificial state of the law of real property, these rights, in Bengal at least, are not by any means varied or intricate. *Jalkar*, or the right of fishery in

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[1]See cl. 4, s. 37 and s. 43 of Act XI of 1859, and *post*, § 133.

[2]*Mahal* means an estate, land separately assessed with the Government revenue. It is also used, in a figurative sense, of a source of revenue not derived from land, *e.g.*, the *Abkari*, or excise *Mahal*. *Khas* mean "peculiar," "private", "own." Thus a *khas mahal* is an estate in the private possession and management of Government.

[3]See cl. 3, s. 4, Reg. XI of 1825.

[4]*Malikana* from *malik*, "an owner," "a proprietor," is an allowance for proprietary right, generally not less than 5 and not more than 10 per cent. on the net collection of the estate.

[5]As for example the *Sandarbans*, or Delta of the Ganges, which supplies Calcutta with firewood.

[6]See *Rules of the Revenue Department*, Ch. XXVI, s. iv, para. 8. Act XXIII of 1863 provides for the adjudication of claims to waste lands proposed to be sold or dealt with on account of Government.

all large natural waters in a *zemindári*, belongs to the *zemindár*, and is usually leased out at a yearly rent. *Phulkar*, or the right of gathering the fruit of gardens and orchards, is similarly let out. Sometimes *Phulkar* means the *zemindár's* right to a part of the fruit of trees standing on a tenant's land. *Bunkar*, or the right of cutting wood in jungle, or waste land, is often enjoyed by the *raiyats* of cultivated lands in the vicinity.[1]

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[1]Most incorporeal rights in India are in a very undefined state, and it would not be possible to classify them under the heads, *appendant*, *appurtenant* and *in gross*, used by English lawyers or under any other satisfactory heads. Rights of common for grazing and other purposes no doubt exist in the unappropriated waste land belonging to villages, but these rights have never been the subject of legislation or indeed of much litigation. In Bengal, fields are not generally enclosed unless when sugarcane and other valuable crops are sown, and then the enclosure is not kept up, once the crop is gathered. In some villages as soon as the regular crops are off the ground, the village cattle in a common herd graze promiscously over the fields of all. In others, each villager grazes his own cattle on his own lands, and trespass on other lands is resisted as vigorously as in England. Whether, in the former case, any one villager could enclose in permanency is a question which I have never known to be raised. The law of *easements* is another branch of law connected with land in India, which is in its infancy. A few sections have, however, been inserted in the recent Limitation Act (see ss. 27, 28, Act IX of 1871), which will doubtless have a considerable effect in settling it by judicial decision. In addition to the tenures mentioned above, there are a variety of tenures met with in different districts of Bengal, such as *gánti jotes* in many districts, *hawilás* and *nimhawlas* in Backergunj *tappas* in Chittagong, *Sarbarahkári* tenures in Cuttack which are now permanent, hereditary and transferable (*Saddananda Maity* v. *Naurattam Maity and others*, VIII B. L. R., 280), I have never met with a complete list of these tenures or a description of their incidents, and even in the district in which any particular tenure is most usual, I have in vain endeavoured to get an accurate description of its origin and peculiarities. During a considerable judicial experience, I have never had a case before me in which it was attempted to prove the *custom* of any particular tenure. The Permanent Settlement destroyed most customary tenures, and the effect of Act X of 1859 has been to reduce all that remained to the classification of rights contained in that Act. Inheritability, transferability, liability, to sale for arrears of rent and non-liability to enhancement of rent are, it may safely be said, the sole incidents, one or more of which now belong to all tenures in Bengal by whatever names they may be known. Land is commonly designated from the use made of it, *e.g.*, *bastu*, land used for the site of the *raiyat's* homestead from Sans, *bas* to dwell ; *udhbastú* land adjoining the *bastú* land ; *dihi*, land in the village, &c. Each raiyat generally holds a portion of each description, and the rates of rent vary, that for the *bastú* being usually the highest.

§ 40.—I now return to the North-Western Provinces, the territories comprised in which were acquired, as we have seen, some forty years after the grant of the Díwání and about twelve years after the Permanent Settlement had been proclaimed in Bengal, Behár, and Orissa. The first result of inquiries made in order to the settlement of the newly acquired Provinces was to create an impression that a mistake had been committed in 1793, and that the Government had then acted prematurely and upon insufficient information. Subsequent experience still further confirmed this impression; and the Directors therefore wisely resolved not to act without the fullest information in settling the revenue of the Ceded and Conquered Provinces. In the proclamation of the 14th July 1802, addressed by Lord Wellesley to the zemindárs, talúkdárs, &c., of the Ceded Provinces, it was notified that, after the expiry of ten years, a permanent settlement would be concluded for *such lands as would be in a sufficiently improved state of cultivation to warrant the measure.*[1] A similar proclamation was in July 1805 addressed to the zemindárs, independent talúkdárs, and other actual proprietors of land in the Conquered Provinces and Bundlekund.[2] In 1807 it was further notified to the above classes in all the above-mentioned provinces that the revenue which would be assessed during the last year of the settlement immediately ensuing the then existing settlement would remain fixed for ever, if the arrangement received the sanction of the Court of Directors.[3] This more extensive promise did not, however, receive the sanction of the Directors,[4] and it was accordingly again notified[5] that such promise was rescinded, and that at the end of the ten years a permanent settlement would be concluded, in the terms of the first proclamation, for such lands only as would be in a sufficiently improved state of cultivation to warrant the measure. It was further declared that it would be the duty of the Board of Commissioners to ascertain what

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[1]During this period of ten years, there were two triennial and one quartennial settlement at an amount of revenue increased for the period of each settlement—See s. 29, Reg. XXV of 1803.

[2]See Reg. IX of 1805.

[3]See s. 5, Reg. X of 1807.

[4]See paras. 44 to 47 of the Dispatch of the 27th February 1810.

[5]See ss. 2 and 3, Reg. IX of 1812, for the Ceded Provinces, and ss. 2 and 3, Reg. X of 1812, for the Conquered Provinces and Bundlekund; and § 19 of Mr. Holt Mackenzie's Minute.

estates were in a sufficiently improved state of cultivation to warrant the conclusion of a permanent settlement.[1]

§ 41.—As soon as it was attempted to carry into effect a rule limited by such a very indefinite condition, the necessity for more exact orders became at once apparent,[2] and the first question asked was, what proportion of waste land should operate to exclude from the benefit of a permanent settlement? This question was then answered by adopting a scale varying from one-third to one-fourth of waste. The Court of Directors ordered[3] that the settlement of no district was to be declared permanent until the whole of the proceedings had been submitted to and approved by them. In order to allow time for the collection, transmission, consideration, and return of the requisite information, it was directed that a further temporary settlement should be made for a period of five years.[4] The first district in which operations were commenced, was Cawnpore; and the result was, that the Board of Commissioners entertained such doubts as to the accuracy of the materials on which the settlement had to be formed, that the Board and the Government and the Court of Directors were agreed not to confirm the settlement in perpetuity, but to leave it open to revision after the resources of the country had been better ascertained and *individual rights established.*[5] A similar determination was formed in respect of Bareilly and Shahjahanpore, to which districts operations were next extended.[6] As inquiry progressed further, it became more and more evident how little reliance was to be placed on arguments drawn from the experience of Bengal, how complicated was the problem to be solved, and how great danger lay in precipitancy.

§ 42.—The Court of Directors finally resolved that it was essential to their judgment on the adequacy and stability of any settlement submitted for their confirmation, not merely

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[1]S. 4 of Reg. IX of 1812 and s. 4 of Reg. X of 1812.

[2]It will be seen hereafter that this necessity for more definite instructions increased with additional information and that, so recently as 1871, a question arose and had to be referred to the Home Government, the discussion of which strongly suggested the idea that much work had been done in the dark before that.

[3]Dispatch of 1st February 1811.

[4]Dispatch of 27th November 1811.

[5]Paras. 49 *et seq.* of general letter of 28th April 1817.

[6]Proceedings of 18th November 1814, and paras. 55, &c., of general letter of 2nd April 1817.

that they should have ample information respecting the general nature and the resources of the districts, the extent of the land cultivated and capable of cultivation, and the quality and value of the produce; but likewise that they should receive a full and particular detail of all local tenures and usages, of the rates of rent and the modes in which it was collected and distributed, of the constitution of the village communities and the rights and interests of the classes composing them, of the character and habits of the people, and generally of all points relating to the internal condition of the country.[1] To give effect to this resolution, Regulation VII of 1822 was passed, the preamble of which recites it to be the wish and intention of Government that in revising the then existing settlement, the efforts of the Revenue Officers should be chiefly directed, not to any general and extensive enhancement of the *jama*,[2] but to the objects of equalizing the public burthens, and of *ascertaining, settling, and recording the rights, interests, privileges and properties of all persons and classes owning, occupying, managing, or cultivating the land or gathering or disposing of its produce, or collecting or appropriating the rent or revenue* payable on account of land or the produce of land, or paying or receiving any cesses, contributions or perquisites to, or from any persons resident in, or owning, occupying or holding parcels of any village or mahal. Section 9 enacted that "it shall be the duty of Collectors and other officers exercising the powers of Collectors, on the occasion of making or revising settlements of the land revenue, *to unite with the adjustment of the assessment and the investigation of the extent and produce of the lands, the object of ascertaining and recording the fullest possible information in regard to landed tenures, the rights, interests, and privileges of the various classes of the agricultural community*"—and that for this purpose

[1] *Mr. Holt Mackenzie's Minute of the 1st July 1819*, s. 224. Elsewhere in the same Minute, Mr. Mackenzie remarked that the tendency of our revenue system had been to pay rather too little respect to the various tenures and other circumstances attaching to the Village Communities, which must (if private rights be held sacred) limit the Government demand—and he gave it as his opinion that the adequacy or inadequacy of any assessment of revenue could not be determined without an inquiry into the tenures, rights and privileges of the community; and that such inquiry would properly be united with the investigation of the extent and produce of estates before declaring the cases, to which the provisions of a permanent settlement should be held applicate—§§ 253, 244, 302 and 316.

[2] Amount of revenue assessed upon an estate.

their proceedings should embrace "*the formation of as accurate a record as possible of all local usages connected with landed tenures, as full as practicable a specification of all persons enjoying the possession and property of the soil or vested with any heritable or transferable interest in the land or the rents of it, care being taken to distinguish the different modes of possession and property, and the real nature and extent of the interests held, more especially where several persons held interests in the same subject-matter of different kinds or degrees.*"

§ 43.—Under these provisions,[1] the Settlement Officers have constructed for every settled estate a "*Record of Rights*" containing the most valuable information as to all rights in land existing in the North-Western Provinces.[2] Having regard to the arbitrary and discretionary nature of the Government which preceded ours, and to the rude and unsettled state of things which we found in the country,[3] it will readily be conceived that the task of ascertaining and recording rights, which is not always one of easy accomplishment, must occasionally have been followed by peculiar results, when *ascertaining* too often involved *determining* what was indeterminate; and the precision of ideas, indispensable in order to record, necessarily gave fixity by definition to what had antecedently been variable and uncertain.[4] It was exceedingly difficult to steer a safe course between, on the one hand,

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[1]As subsequently amended, see *post*, § 164. Regulation VII of 1822 was repealed, so far as relates to the North-Western Provinces, by Act XIX of 1873, which consolidated the Revenue Law relating to those Provinces. Section 62 and the following sections of this Act contain the existing provisions as to the formation of the *Record of Rights.*

[2]It is greatly to be regretted that these documents have never been generally published, or that the task of consolidating them into one general view has never been undertaken. If the outline which follows appears meagre or imperfect to those who have greater practical knowledge than the Author, he begs that it will be remembered that his experience has not lain in the North-Western Provinces, and that the best materials for the subject being contained in unpublished documents, have not been available.

[3]"When the country fell under our Government, we found no uniformity of system in any part of it. Every description of middlemen and every kind of opposing interest was in existence."—*Minute of Lord Moira, dated 21st September 1815*, § 45.

[4]Mr. Holt Mackenzie in his able Minute to which I have already so often referred, says :—"It would perhaps be advisable in all general regulations to adopt the use of artificial words, barbarous as they may

perpetuating variances which depended not upon principle but upon the capricious exercise of undefined authority—and, on the other hand, destroying by a general and sweeping[1] measure essential distinctions understood and acknowledged by the people, and recognized by such usage as an arbitrary despotism allowed. To say that this difficult task has been accomplished wholly without mistake or error would be to assert what is not true; but it may with safety be declared that the mistakes have been few in comparison with the arduousness of the work to be done; that none have been more ready to see and acknowledge error than the Government which was led to commit it; that misconceptions were unavoidable when questions of right, almost evenly balanced, depended for their solution upon arguments of policy and expediency; that where it was possible to do so without greater mischief, Government has ever been ready to retrace its steps and undo its own work[2] on discovering that an erroneous or inexpedient course had been pursued; and that the cardinal mistake committed in Bengal has throughout been avoided, and individual rights have been respected and protected as far as was consistent with that degree

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seem, and altogether to avoid the use of terms already in use until the uniformity of their acceptance throughout the country is fully ascertained '—and he gives, as an instance of the danger to be avoided, the directly opposite use of the word zemindár in the North-Western Provinces and in Bengal—§§ 622 and 623. Every student of logic knows the great danger arising from the use of ambiguous terms (see Whately's Logic, Book III, s. 2, and App. 1), and this danger was an extreme one, when we came to deal systematically with the state of things which we found in India.

[1]Sir J. E. Colebrooke in his Minute of the 12th July 1820 pointed out that the Permanent Settlement of Bengal was a sweeping enactment of this description by which the peasantry of Bengal were sacrificed. The Marquis of Hastings in his Minute of the 31st December 1819 says with reference to the Upper Provinces :—"A general regulation, that would be efficient for the protection of the *raiyats* could hardly be framed, were their tenures simple and uniform in different districts. So far from this being the case, there is often extraordinary diversity in the rights of individuals inhabiting the several villages within the same district..... A sweeping arrangement which shall level these distinctions, or which, on the other hand, shall apply to all villages this graduated scale, because it obtains in some, must involve a violation of those prescriptive rights which equity and policy should be anxious to preserve uninjured under British sway".

[2]Take for example Lord Canning's Minute of the 6th October 1858, abandoning the maintenance of the Village System in Oudh and re-establishing the *Talúkdárs*.

of uniformity which is indispensable for the creation and existence of system.[1]

§ 44.—As a natural consequence of the different plan pursued in dealing with the North-Western Provinces, there is now to be found in these provinces a much greater diversity of tenures than in Bengal; and, although some of these tenures are in whole or part of modern creation, the greater number date from a period antecedent to our rule. To give a complete and accurate account of them all would lead me far beyond the limits of this work and would indeed scarce be possible with the materials at my disposal. The following brief description of some of the most important of them may, however, be useful as an introduction to a subject of great interest and considerable extent and intricacy.

§ 45.—The *Talúkdárs*[2] of the North-Western Provinces and Upper India correspond, as has already been pointed out, to the old *Zemindárs* of Bengal and had a somewhat similar origin. Some of them (and these have been termed *pure tálúkdárs*) are descended from military leaders and other persons who formerly held a superior rank in the country. Others again (and these have been termed *impure talúkdárs*) have come into existence at a later period and under the Mahomedan rule, having been originally mere Collectors of the Government revenue, and subsequently, by the favour of those in authority or in consequence of the weakness and decay of the Empire, having acquired an hereditary interest.[3] The nature of this interest was not very well defined and probably was not homogeneous in all parts of the country. In some cases the *talúkdár* while claiming an hereditary right to stand between the Government and the village *zemindárs*, urged no pretension to a property in the land and admitted the rights of the village *zemindárs* as the immemorial occupants of the soil and entitled to give, sell, or mortgage

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[1]It may be observed that the mere fact of selecting any particular set of persons as the class with which the settlement is to be made is certain to have, as a result, the enlargement of the rights of that class at the expense of the rest of the community—See *Mr. Holt Mackenzie's Minute*—§§ 337-338, 349 *and* 355—*Mr. Shore's Minute of 8th June* 1789, 173—*and Maine's Village Communities*, pp. 149—151.

[2]*Lakhiráj* tenures in the North-Western Provinces, as in Bengal, are the highest class of right in land. The incidents of these tenures are generally the same throughout the country.

[3]See *Carnegy's Land Tenures of Upper India*, Chapter IV; and *Mr. Holt Mackenzie's Minutes*, §§ 395-408.

their lands at will. In other cases the *talúkdárs* set up extensive claims to the property of the villages included within their talúks on the pleas of sale, gift or mortgage executed in their favour by the original zemindárs.[1] The mistake committed in Bengal of creating both alike absolute proprietors of the soil and ignoring all other rights was now carefully avoided, and it was pointed out to Settlement Officers that the question to be judicially disposed of in each case was whether a village was exclusively the property of the *talúkdar*, or other persons possessed therein heritable and transferable properties independent of the will of the *talúkdár*. In the former case the settlement was made with the *talúkdár*. In the latter case the village *zemindárs*, or persons possessing similar rights, were admitted to settlement and the *talúkdárs* received a fixed allowance, generally of 22½ per cent. on the revenue collections.[2]

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[1] "When one of the village zemindárs was employed by the ruling power to manage the village in his neighbourhood and to collect the revenue as a *talúkdár* or farmer, he appears to have engaged in a constant struggle for the extension of his property and, as he generally had the hand of power and a preponderating influence with the Amil, the various villages comprising the *talúk* or farm were too frequently converted by force or fraud into one estate".—*Idem.*

[2] It has been contended by some that, as in Bengal everything was sacrificed to the proprietary right of the *zemindárs*, so in the North-Western Provinces we went into the opposite extreme and restored and fostered the village system in many instances at the expense of proprietary rights fairly belonging to the *talúkdárs*, as having been acquired by purchase or other just means. In Oudh we attempted to establish the village system, but changed our policy after the Mutiny. In many of the districts of the North-Western Provinces the holders of villages belonging to *talúkdárs*, which had been broken up at the settlement, acknowledged the suzerainty of the *talúkdárs*, as soon as our authority was subverted. This conduct amounted, as Lord Canning wrote, almost to an admission that their own rights were subordinate to those of the *talúkdárs*—that they did not value the recognition of these rights by the ruling authority—and that the *talúkdári* system is the ancient, indigenous, and cherished system of the country. This being the case in our older provinces, where our system of Government had been established for more than half a century, during twenty years of which we had done our best to uphold the village occupant against the interest and influence of the *talúkdári*, Lord Canning decided that we should retrace our steps in Oudh ; and accordingly the *talúkdárs* of Oudh were declared to possess a permanent hereditary and transferable proprietary right, subject to any measure which the Government might think proper to take for the purpose of protecting the inferior zemindárs and village occupants from extortion, and of upholding their rights in the soil in

§ 46.—The Village System, as previously described (*ante*, §§ 18-21) was in existence in the Upper Provinces when they came under our dominion.[1] Under the system the proprietors or *village zemindárs* were in general so numerous a body that a settlement with them all would have been highly inconvenient. We therefore continued a practice which existed before our time of selecting one amongst the sharers whose name was entered in the public accounts as the person responsible for the collection and payment of the revenue. The proprietor who is thus a party in his own name to the contract with Government for the payment of the revenue is called the *Sádr Malguzár*, or *Lumberdár* while the co-sharers or proprietors who are not parties in their own names are called Pattidárs.[2] Under the existing law, the settlement is to be made with the proprietor, or if he have transferred possession to a mortgagee or vendee, than with such mortgagee or vendee. Where there are several proprietors, the settlement is to be made with

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subordination to the *talúkdárs* (*Letter No. 6268 of 10th October 1859 from Secretary to Government of India to Chief Commissioner of Oudh*). In a subsequent communication it was remarked that "it is obvious that the only effectual protection which the Government can extend to these inferior holders, is to define and record their rights and to limit the demand of the talúkdár as against such persons during the currency of the settlement to the amount fixed by the Government as the basis of its own revenue demand—See *The Oudh Estates Act, I of 1869*. Mr. Carnegy traces to five sources the proprietary titles thus confirmed by the British Government, *viz.* (1) usurpation, (2) purchase; (3) grant; (4) reclamation of waste, and (5) gift, p. 3.

[1]See *Lord Moira's Minute of 21st September* 1815, § 82.

[2]See s. 2, Act I of 1841. *Sádr* means "chief" and *malguzár* means "payer of revenue." *Lumbadár* is derived from the English word "number"—the natives interchange the letters *n* and *l*—and *dár*, a holder, *i.e.*, having a number in the Collector's Roll. *Patti* is a share—one of the many shares into which the village has been split up by the operation of the laws of inheritance, &c. *Pattidár* means any holder of a share, but has in practice been limited as above. In a *makmúl* or perfect *pattidari* tenure, the lands are held in severalty by the proprietors who are all jointly responsible for the revenue. In a *námakmúl* or imperfect *pattidari* tenure, part of the land is held in common—and the profits of this go first to meet the revenue—and the remaining part is held in severalty. When one of the co-sharers fails to pay his quota, the others have to make it good. This accounts for the origin of a practice, which had to be stopped by legislation in Bengal (see clause 2, section 63 of Regulation VIII of 1793), namely, of demanding the rents of absconded *raiyats* from those that remained. See as to the *pattidari* tenure, *Mr. Holt Machenzie's Minutes*, §§ 576-587; and *Lord Moira's Minute of 21st September 1815*, §§ 80-97.

them all jointly or with their representatives elected according to custom. When several persons possess separate heritable and transferable proprietary interests of different kinds, the Settlement Officer is to determine (1) which of such persons shall be admitted to engage for the payment of the revenue, due provision being made for securing the rights of the others; and (2) the manner and proportion in which the net profits of the estate shall be allotted to the several persons possessing such separate interest.[1]

§ 47.—The *Bhaiyachárá*[2] tenure, which is to be found chiefly in Bundlekund, is similar to the *Pattídári* tenure, save in some few particulars. The village is divided into *thokes* and each *thoke* is subdivided into *behrís*. The *asamí* or cultivator pays the *bheríwar*, who in his turn pays the *thokedár*, who again pays the *lumberdár* or *mokhia* as he is called in Bundlekund. When any *asamí* fails to pay his quota, the *behríwar* makes good the deficiency by a fresh assessment on all the *asamís*, made upon the same principle as regulated the first assessment. In the event of the failure of a whole *behrí*, the deficiency is levied in a similar manner from the *thokes*. All the *khúdhásht* raiyats in a bhaiyachára village are descendants of the original proprietors, and the only tenants are the *paikásht raiyats* of the neighbouring villages. The original settlers were sufficiently numerous to enable their descendants to bring the whole of the land of the village under cultivation without calling in the aid of strangers, and the minute subdivision of property brought about by the operation of Hindú Law has created a large number of petty proprietors, who all enjoy equal rights and privileges. The original assessment having been adjusted with reference to the quantity of land in cultivation at the time, the equality of allotment was disturbed by increase of cultivation in some *behrís* or decrease in others. It is customary from time to time to rectify the inequality thus created by a fresh distribution of shares. The operation of this custom has led to very considerable dissension, those who have extended the cultivation being naturally unwilling to transfer

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[1]See sections 43, 44, and 53 of Acts XIX of 1873.

[2]*Bhaiyachára* is derived from *bhái*, *bhaiyá*=brother and *áchará* =institution: or, according to others, from *bhaiya* and *chár*=four, indicating, according to native idiom, that all *pay alike*. An account of this tenure will be found in the correspondence given at pages 207, 219, 224, 225, 239 and 240 of *Selections from the Revenue Records of the North-Western Provinces, published in* 1866.

the fruits of their labours to their less industrious brethren. Where there is a custom that the land or the amount of revenue payable by each sharer be periodically re-distributed or re-adjusted, the Settlement Officer may enforce such custom.[1]

§ 48.—Subordinate to the proprietors with whom the settlement is made, there are various classes of sub-proprietors or inferior proprietors whose rights are recorded in the *Record of Rights*, and the protection of which is part of the duty of Settlement Officers. This protection is usually afforded by the formation of a sub-settlement on behalf of the proprietors with them, when their interest extends to the whole mahál or estate, and is heritable and transferable. They are bound by this sub-settlement to pay to the superior proprietor, with whom the settlement is made, an amount equal to the Government revenue together with the share of the profits of the mahál to which the Settlement Officer has declared the superior proprietor to be entitled Occasionally a *settlement* is made with the inferior proprietor, the only difference in this case being that he pays the amount into Government Treasury, whence his share of the profits is paid to the superior proprietor.[2] Where the subordinate rights are not of such a nature as to entitle their possessor to settlement, the protection may be afforded by a sub-settlement or in such other way as shall maintain the sub-proprietors in the enjoyment of, or of an equivalent to, their rights. When these rights are to receive from the tenants any money-payment or portion of the argicultural produce, this is accomplished by assigning in lieu thereof the proprietary right in a certain portion of the mahál, the profits of which are, in the opinion of the Settlement Officer, equivalent to such payment or portion.

§ 49.—Inferior or sub-proprietary[3] rights are known by various names in different parts of the country. They are traceable to purchase ; to relationship or connection the original stock ; and to former proprietorship lost by force or under the pressure of necessity, the ex-proprietor having retained the whole or a portion of his lands on more or less favourable terms under the new proprietor. What happened in the case of proprietors, came also to pass in the case of sub-proprietors, under whom was thus formed a further class of

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[1]Section 47 of Act XIX of 1873.

[2]Sections 54 and 55 of Act XIX of 1873.

[3]In what immediately follows I have borrowed very largely from Mr. Carnegy's little work on *Land Tenures in Upper India.*

sub-proprietors in the second degree, and occasionally this quasi sub-infeudation extended to the third and fourth degree.[1] Mr. Carnegy gives the following list of sub-proprietary titles found in the province of Oudh. Several of these included in the list are also commonly found in the districts of the North-Western Provinces—*viz.*, 1, Pakhtadari; 2, Dídárí; 3, Sir; 4, Nankár; 5, Shankalap; 6, Birt; 7, Baikitát; 8, Bag hát; and 9, Biswí. The first seven are heritable and transferable. The Bahgát tenure is subject to special conditions, and the Biswi tenure is altogether contingent. The term *pakhtadárí* has come into existence under British rule. In former times when an ex-proprietor entered into an engagement for the revenue of his village at a *fixed* amount, he was said to hold *pakha*.[2] He was responsible for the loss and received the profit, and this whether he collected himself or with the aid of the Government officials. When he merely engaged to collect and pay into the Government Treasury, receiving a commission on the collections and having no interest in the profit or loss, the arrangement was termed *kachcha*. It was our policy to consider that person to be in possession of a village who was responsible for the loss and received the profit. Thus the *pakhtadár*, or person who held *pakka*, came to have certain rights, which we admitted and acknowledged though restoring the former proprietor,[3] and the term *pakhtadárí* came to be applied to an intermediate tenure between the proprietor and the cultivator.

§ 50.—In the case of transfers, voluntary or involuntary, it was a common practice for the transferree to assign a protion of the land in perpetuity to the former proprietor for his

[1]Just as the principle of the Patní tenure in Bengal was carried down to *dar-patnis* or *patnis* in the second degree—(*dar*=within or under); *sepatnis* or *patnis* in the third degree (*se*=three) and even still lower.

[2]*Pakka* means "ripe," "mature" "complete," "settled;" *Kachcha* means "unripe," "immature," "incomplete," "unsetled."

[3]Mr. Carnegy seems to think that the *pakhtadár* was always an *ex-priprietor*, and that the antithesis in the use of *pakka* and *kachcha* lay in the existence or non-existence of *rights*. May it not have lain in the amount of revenue being fixed and the engager being responsible therefor or the contrary being the case? A person having some rights in the village no doubt commonly made the *pakka* engagement, but a stranger may also occasionally have engaged. He thinks that the term *mastajir* was always applied to strangers, who were never said to hold pakka: but was this use of the latter word strictly adhered to, when it developed into *pakhtadár* admist the changes and consequent confusion that came upon the country?

subsistence, and this was called *Didári*. The assignment, which was usually in writing, might be of one or more villages or merely of a few fields. When a whole village is held under this tenure, the sub-proprietor invariably enjoys all village privileges and dues. *Didári* grants were in most cases originally rent-free, but were sometimes assessed with a low quit-rent termed *barbasti*.[1] The land which was retained by a proprietor in his own possession and caltivated with his own ploughs, was termed Sír.[2] When a proprietor parted with his property, he not unsually kept possession of his sír land, at first perhaps without payment of rent; but afterwards rent was certain to be levied from him, generally however at a lower rate than that paid by his neighbours. Sub-proprietary sír originated also in grants to the junior members of the proprietary family.

§ 51.—*Nankár*[3] was an assignment of land or revenue for subsistence, consisting sometimes of one or more entire villages, sometimes of a portion only of a village. It was made in some instances to proprietors, in other instances to persons having no proprietary right, such as Kanungos, Mukaddams, Chaudhrís, Kazis, who were generally however servants of the State: and it was doubtless in this capacity that the allowance was made to zamindárs. Sub-proprietary nankár is usually an assignment like *didari*, but differing

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[1]As to *Mandidari* tenures see *Rani Bankat Narseya* v. *Gauri Singh and another*, 2 N.-W. P., H. C. R., 369.

[2]*Sír* is the Sanscrit word for a plough. *Sír* land may now be created by continuous cultivation for twelve years by the proprietor himself with his own stock or by his servants or by hired labour, see s. 5, Act XIX of 1873. In Bengal it is called *nijjot* (own cultivation), *khas-khamár* or *khamar*. No right of occupancy can be acquired in such land let on lease for a term, or year by year. Apparently if it is held or cultivated under any other tenancy, a right of occupancy can be acquired in it as in other land—(*Gaur Harú Singh* v. *Behári*, III. B. L. R. Ap. 138; *Sheikh Ashraf* v. *Ram Kishore Ghose and another*, XXIII W. R. 288).

[3]*Nankár* is derived from *nan* = bread and *kár* = business—See *Appendix* 10 *to Mr. Shore's Minute of* 2*nd April* 1788, and *Selections from the Revenue Records of the North-Western Provinces*, p. 189. Nankár is sometimes improperly confounded with *malikana* which was allowed to *proprietors* only. When a proprietor was removed from the management of his estate, *malikana* was allowed to him, but nankár was usually withdrawn. "Malikana is the unalienable right of proprietorship, but nankár depends upon fidelity and attachment to the State and a due discharge of the public revenues."—*Answers of Gholam Hosein Khan, Appendix No.* 16 *to Mr. Shore's Minutes of* 2*nd April* 1788: *see also Lord Moira's Minute of* 21*st September* 1815, §§ 124—132.

from it in this, that not *land* but a portion of the rental in *money* was the subject of the assignment. Sometimes a fixed sum was given, and sometimes a fractional share of the *then* rental. In the latter case, however, the item remained fixed and not subject to enhancement or abatement. The amount is either paid to the recipient, or he is allowed an equivalent remission from the rent of any land held by him as a cultivator. A *Shankalap* tenure consisted either of a whole village, or of lands forming a portion of a village. In the former case, a sum was paid down by way of fine when the deed was executed, under which the village was granted as a sub-tenure at favourable rates.[1] In the latter case, the poorer outlying or uncultivated lands were made over for a money consideration. A portion of these was to be cultivated subject to the payment of a rent gradually increasing until a stipulated maximum was reached in a certain number[2] of years. The rest was left rent-free for the village site, groves, gardens and similar uses.

§ 52.—*Birt*[3] tenures are of two kinds, *purchased* and *conferred*. The former generally originated in an assignment for money by a proprietor, who wished to have waste brought into cultivation or was compelled by necessity to raise money on his cultivated land. This tenure is always sub-proprietary, held under the proprietor who stood between the holder and the Government. It is heritable[4] and transferable, and the annual rent is fixed in perpetuity. Sometimes part of the land was to be held rent-free, and the rest of it was to be subject to enhancement. *Conferred birt* tenures were originally eleemosynary, being sometimes in the nature of life

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[1] This is very similar to a *patní talúk* in Bengal.

[2] Somewhat similar to the *Jangalburí* (*burí*=cutting) tenures of Bengal. For a year or two no rent was asked. Then a low rent was paid, and this gradually increased (*rassadí*) as a greater quantity of land was brought under cultivation.

[3] *Birt*, from the Sanscrit *vritti*, means "maintenance," "support." Purchased *Birt* tenures are similar in their origin to *patní talúks* and scarcely differ from the first kind of *Shankalap* tenures. In one other respect this tenure, as it exists in Gorukhpore at least, resembles the *patní talúk* of Bengal in this, namely, that the proprietor or superior landlord is entitled to a fine on every transfer by sale, gift or inheritance, and the formality of his consent to all such transfers—See *Report of the Board of Commissioners to Lord Minto, dated 5th July* 1808, § 12, and Reg. VIII of 1819, s. 5.

[4] As to a *Máfí* Birt tenure being heritable, see *Mahendra Singh Jokha Singh and others* (decided by the Privy Council), XIX W. R., Civ. Rul., 211.

pensions and, according to usage, resumable at the donor's pleasure. In our first dealing with these tenures, no distinction was drawn between the two classes. *Baikitát*[1] is a tenure similar to *birt*, but is generally limited to small patches of land containing one or two fields.

§ 53.—*Baghát*, gardens, orchards, groves belong either to the proprietors, or ex-proprietors, to the holders of intermediate tenures or to tenants. The title of all except the last extends to the land as well as to the trees. The rights of tenants[2] in orchards planted by them depend upon the arrangements made with proprietors or sub-proprietors under whom they hold. Generally no rent is taken and the tenants are repaid for their labour by being entitled to eat the fruit, gather the dry wood, and cut down a tree occasionally for home use, such as roofing a house or making farming implements, the landlord being entitled to claim fruit on festivals and to fell an occasional tree when he requires wood. *Biswí*[3] is a tenure which had its origin in mortgage. When a whole village or fractional portion of a village was mortgaged under native rule, the mortgagee usually obtained possession and was admitted to engage with Government for the revenue. When he obtained possession but was not admitted to engage for the revenue, he deducted the interest on the loan from the rental of the land and paid the difference, termed *parmsana*, to the mortgagor, who was responsible for the revenue. When, according to our rules, redemption was barred, the settlement was made with the mortgagee as proprietor. In

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[1]From *bai*=sale and *kita*=a share, piece. It may be observed that all these tenures have their origin in a practice common not only to different parts of India, but to the East and West, *viz.*, the practice of raising money by parting with a greater or lesser fragment of what constitutes the highest proprietorship or aggregate of rights in land in the particular community. A perpetual lease at a fixed rent granted for a sum of money paid down was thus a form of alienation which came naturally into use in both societies. See *Williams' Law of Real Property*, 6th Ed., p. 37, for the rise of a similar practice in England. When the Baron required money for the Crusades, their land was the only available means of raising it.

[2] In Bengal a distinction is made between trees that are *swarúp*, *i.e.*, planted by the tenant, and those that are *pororúp*, *i.e.*, planted by others before he came on the land. He may cut down and sell the former, but not the latter, *i.e.*, according to usage apart from contract.

[3] *Biswí* is derived from *biswa*=a twentieth part, but usually applied to the twentieth of a bigha. No doubt the calculation of the *parmsana* was made in old times as so many twentieth and the name remained although the principle of calculation was altered.

the case of land less than a fractional share of a village, which under native Government always remained attached to the parent village, the *parmsana* was paid in the same way to the mortgagor ; and when redemption was barred, the mortgagee, *biswadár*, became the holder of an intermediate title, the *parmsana* or quit-rent being generally made equal to the Government revenue *plus* five per cent. Máfi[1] grants were made by proprietors to Bramins, bhats, fakirs, and such like for religious services or through religious veneration. They were hereditary though not originally transferable. Even when transferred they were not resumed, and so usage made them transferable in course of time. *Marwat* grants were grants of a little land rent-free as pensions to the heirs of retainers killed in the service of the proprietor.

§ 54.—*Jagírs* were grants of lands to retainers still in service in lieu of wages. When granted by the Emperor, they were assignments not of the land, but of the revenue,[2] and were made as an appendage to the dignity of *mansub*, a kind of nobility conferred for life, and revocable at the Emperor's pleasure. The *Mansubdár* was supposed to command a body of horse. There were sixty-six grades of the rank, varying according to the number of horse. This number was however merely nominal, and the personal pay of the mansubdár, though regulated thereby, was distinct from that which he received for the effective horse, which he was obliged or

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[1] *Máfi*, *Máfi* means "forgiven," remitted, *i.e.*, the rent or revenue of which was remitted, these grants being generally rent or revenue-free. The term is not, that I am aware of, used in Bengal, where land granted to Bramins is called *Brahmattar* and land granted to an idol is called *Dewitter*. *Piran* from *pir*=a "saint," is land granted to a (Mahomadan) holy man for his support, or for keeping up the tomb of a deceased saint.

[2] It is important to bear this in mind. That the ownership of the soil was not in the sovereign is proved by a variety of arguments. One of these is remarkable, being drawn from the fact that the Emperors purchased land when they wanted it. Aurangzib purchased the parganas of Lundi Palan, &c., in the vicinity of Delhi. Akbar purchased lands for the forts of Akbarabad and Illahabad ; Sháh Jahan for the fort of Sháh Jahanabad ; and Alamgir for the fort of Aurangabad and for mosques. When the Jagirdars got possession, they paid *malikana* to the zemindárs. There is a native Hindu saying that "the land belongs to the zemindár and the revenue to the king ;" and according to Mahomadan law the sovereign has a right of property in the tribute or revenue ; but he who has the tribute from the land, has no property in the land (see authorities quoted in *Appendix No.* 12 *to Mr. Shore's Minute of* 2*nd April* 1788).

allowed to maintain. *Jagírs*[1] were of two kinds, conditional and unconditional. *Conditional* jagírs were granted generally to the principal servants of the Emperor in order to meet the expenses of a particular office: and these were held only so long as office was retained. *Unconditional* jagírs were independent of any office and were personal grants for the maintenance of a dignity, a suitable number of attendants and the effective troops which the mansubdár or jagírdár was bound to have in readiness. These grants were for life only. If the lands produced more than the mansubdár's allowance, which was always fixed, he was bound to account for the surplus (*taufír*). There were few jagírs in Bengal. In Bahár a large number were created in the time of Sháh Alam[2] and of his immediate predecessor during the anarchy and decline of the Mogul Empire. In many instances, owing to our want of information, persons claiming by right of inheritance succeeded to jagírs, contrary to the constitution of the Empire, and thus what was originally a mere life grant has become an estate of inheritance.

§ 55.—The Grant Rent Act (X of 1859) originally extended to the North-West Provinces; but it was soon found that its provisions were not equally applicable to these provinces and to Bengal. It was amended by Act XIV of 1863. But both Acts were repealed by Act XVIII of 1873, the existing "North-Western Provinces Rent Act."[3] The substantive provisions of this Act are generally similar to, though differing in some details from, those of Act X of 1859. Persons who in *permanently settled districts* possess a permanent transferable interest in land intermediate between the proprietor of a *mahál* and the occupants, and who hold at a fixed rent not changed since the time of the permanent settlement, are entitled to continue to hold at such rent.[4] Tenants in districts or portions of districts *permanently settled* who hold lands at fixed *rates* of rent not changed since the permanent settlement have a right of occupancy at those rates and are called "*tenants at fixed rates.*"[5] In the case of both these classes, when proof

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[1] There were no hereditary dignities in the Mogul Empire. See for a full account of these Jagírs. *Mr. Shore's Minute in the Rights and Privileges of Jagírdars, dated 2nd April* 1718, from which the above account is taken.

[2] When he invaded Bahár—See *ante*, §7.

[3] This Act does not apply to Oudh, the corresponding provisions for which province are contained in Act XIX of 1868.

[4] Section 4. [5] Section 5.

is given that the rent has not been changed for a period of twenty years before the commencement of the suit, it is to be presumed that the land has been held at that rent from the time of the permanent settlement, unless the contrary be shown or unless it be proved that such rent was fixed at some later period.[1] The rights of tenants at fixed rates are by law declared to be *heritable and transferable.*[2] Their rent is not liable to enhancement[3] except on the ground that the area of the land in their holding has been increased by *alluvion* or otherwise, and they can claim abatement on the ground that such area has been diminished by *diluvion* or otherwise.[4]

§ 56.—"Ex-proprietary tenants" are persons who lose or part with their proprietary rights in an estate or mahál, but who retain the *sír* land held by them in such mahál. The law gives them all the rights of *occupancy tenants* in such *sír* land held by them at the date of losing or parting with their proprietary rights, and further enacts that their rent shall be four annas in the rupee less than the prevailing rate payable by tenants-at-will for land of similar quantity and with similar advantages.[5] "Occupancy tenants" are those who have actually occupied or cultivated land continuously for twelve years ; and to such the law gives a right of occupancy in the land so occupied or cultivated by them. The occupation or cultivating of his father or other person from whom a tenant *inherits* is deemed the occupation or cultivating of the tenant. No right of occupancy can be acquired (1) in land held from an occupancy tenant, an ex-proprietary tenant or a tenant at fixed rates ; (2) in sír land ; or (3) in land held in lieu of wages. When a tenant not having a right of occupancy holds under a written lease, the necessary period of twelve years does not begin to run until the expiry of the term of the lease.[6] A right of occupancy is not transferable by grant, will, or otherwise except as between persons who

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[1] Section 6.

[2] Section 9. They are not necessarily transferable in the Lower Provinces.

[3] Section 11.

[4] Section 18.

[5] Section 7. See, as to Oudh, section 5, Act XIX of 1868, which gives a heritable but not a transferable right under somewhat similar circumstances.

[6] Section 8. The contrary is the law in Bengal—See *Pundit Sheo Prakask Misser* v. *Ram Sahai Singh,* VIII B. L. R., 156 ; XVII W. R. 62.

have become by inheritance co-sharers in such right. It descends, however, in the regular course of inheritance, as if it were land, but no *collateral* relative of the deceased who did not share in the cultivation of the holding during his lifetime is entitled to inherit.[1] The rent of ex-proprietary or occupancy tenants is liable to enhancement only (1) by a written agreement registered under the Registration Act or recorded before the village *Putwári* or the *Kánúngo*, (2) by order of a Settlement Officer passed under the law for the time being in force, or (3) by an order made under the Rent Act. Such last mentioned order may be made when the rent has not been already fixed by an order of a Settlement Officer under the Land Revenue Act, or by an order under the Rent Act, or where such an order has been made, but the term thereof has expired—on the ground (1) that the rate of rent paid is below the prevailing rate payable by the same class of tenants for land of similar quantity with similar advantages ; (2) that the value of the produce or the productive powers of the land have increased otherwise than by the agency or at the expense of the tenant ; or (3) that the quantity of land held has been proved by measurement to be greater than the quantity for which rent has been previously paid. In the case of *ex-proprietary* tenants the enhanced rent, like the old rent, is to be four annas in the rupee below the prevailing rate for tenants-at-will.[2] The tenant may, under similar conditions as to previous orders fixing the rent, apply for abatement on the ground (1) that the area of the land held by him has been diminished by diluvion or otherwise ; or (2) that the value of the produce or the productive powers of the land have decreased by any cause beyond his control. When the rent has been fixed by an order under the Rent Act, no order for enhancement or abatement may be made (1) until the expiry of ten years from the date on which such order took effect ; or (2) until the revision (before confirmation) of the assessment of the district by order of the

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[1] Section 9. This apparently excludes evidence of a custom to transfer which is admissible in Bengal—See *Unapúrna Dasi* v. *Umacharan Das*, XVIII W. R., 55 ; *Sriram Bose* v. *Bissonath Ghose*, III W. R., Act X, Rul. 3 ; *Ajúdhya Prasad* v. *Emam Bandi Begum*, B. L. R. sup. Vol., F. B., 725 ; *Norendro Narain Rai* v. *Eshan Chundra Sen*, XIII B. L. R., 274 and XXII W. R., 22 ; and *Nankú Rai* v. *Mahabir Persad*, III B. L. R., App., 35.

[2] Section 13. See, for Oudh s. 32, Act XIX of 1868, which somewhat differs.

Local Government; or (3) until the conclusion of the period of the settlement of the District—whichever of the three events occurs first.[1] When the rent has been fixed by order of a Settlement Officer under the Land Revenue Act[2] or by an order under the Rent Act, the landholder may apply to enhance such rent during the currency of the term for which the rent has been so fixed on one of the following grounds and on no others: *viz.*—(1) that the area of the tenant's holding has been increased by alluvion or otherwise; (2) that the productive powers of the land have, *since the date of the order*, increased otherwise than by the agency or at the expense of the tenant. Similarly the tenant may apply for abatement of rent on one of the following grounds and on no others: *viz.*—(1) that the area of the land has been diminished by diluvion or otherwise, (2) that the productive powers of the land have decreased from any cause beyond his control.[3]

§ 57.—Any tenant may have it determined by the Collector or Assistant Collector whether he is tenant at fixed rates, an ex-proprietary tenant, an occupancy tenant, or a tenant

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[1] Section 16. See, as to Oudh s. 33, Act XIX of 1868, which fixes the first of the above-mentioned periods at *five years*.

[2] See sections 70, 71 and 72 of Act XIX of 1873.

[3] Section 17. See, for Oudh, s. 19, Act XIX of 1868. It may be remarked that the intention of section 16 of the North-Western Provinces Act is not very clear. Sections 16 and 17 equally apply to a case in which the rent *has been fixed by an order under the Act*. Section 16 bars the operation of sections 13, 14 and 15 until the expiry of one of the three periods mentioned therein, *subject however to the provisions of section* 17. Therefore before the expiry of any of those periods, enhancement or abatement of rent may be asked on any of the limited grounds mentioned in s. 17. But section 17 allows enhancement or abatement, on these limited grounds only, throughout the whole term, and therefore restricts the operation of sections 13, 14 and 15 during the whole term as well as during the portion of it covered by s. 16. Suppose, for example, that the rent were fixed for a term of twenty years by an order under the Act, and that the revision of the assessment or the conclusion of the settlement (the two last events in s. 16) did not take place within that time, then by section 17, enhancement or abatement could take place during the twenty years only on the limited grounds therein contained. Section 16, being subject to section 17, allows enhancement or abatement on these limited grounds within the first ten years (first event), and bars the operation of the more general grounds of enhancement and abatement in section 13—15 only for ten years. But section 17 cuts down their operation for the whole twenty years to the limited grounds therein contained. It therefore does more than section 16 does; and section 16 is superfluous. Section 17 can however apply only where there is a *term*, and it may be that section 16 was intended to operate where there is no term.

without a right of occupancy.[1] A tenant without a right of occupancy is a tenant-at-will. He is not, however, liable to pay rent in excess of that paid during the previous year, unless there have been an agreement to this effect recorded by the *Patwári* or *Kánúngo*.[2]

§ 58.—Tenants at fixed rates, ex-proprietary tenants, occupancy tenants and tenants holding under an unexpired lease can be ejected only in execution of a decree under the Rent Act. No such tenant can be ejected or his lease forfeited on account of any act or omission not detrimental to the land or inconsistent with the purpose for which it was let; or which by law, custom or special agreement does not involve the forfeiture of the lease.[3] He may be ejected if a decree for arrears of rent remain unsatisfied at the close of the year, and he omit for fifteen days after notice to pay the amount due under such decree.[4] A tenant not having a right of occupancy or a tenant holding over after the expiry of his lease, is entitled to a notice to quit; and, failing to contest his liability to ejectment, may be ejected.[5] Any tenant ejected under the Act is entitled to his growing crops or other ungathered products of the earth growing on the land at the time of his ejectment, and to use the land for the purpose of tending and gathering them.[6] He is also entitled to compensation for improvements made by him, in consequence of which the annual letting value of the land has been and continues to be increased.[7]

§ 59.—This chapter may well be closed with some remarks upon the subject of Rent in India. It has been said that rent is a British creation, and this is certainly true to the extent that the fund, from which much of the present rent is paid,

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[1] Section 10.

[2] Section 21. There is no corresponding provision for Bengal.

[3] Section 34. These provisions are not in the Bengal Act, but the decisions of the Courts have in some respect supplied their place.

[4] Section 35.

[5] Sections 36, 37, 38, 39 and 40.

[6] Section 42. See *Wigglesworth* v. *Dallison*, 1 Smith's Leading Cases, 520; and Smith's Law of Landlord and Tenant, 2nd Edn., pp. 350—357. These very necessary provisions are wanting in the Bengal Act.

[7] Sections 44—47. See, for Oudh, sections 22—26 of Act XIX of 1868. Similar provisions are also wanting in the Bengal Act. Elaborate provisions for compensation to tenants will be found by those desirous of studying the subject, in sections 1—21 of the 33 and 34 Vic., cap. 56, passed in 1870 for Ireland.

is the fruit of the peace which the British have kept, and of the moderation of their fiscal demands.[1] It will, however, have appeared from what has already been presented to the reader that the germ of rent existed in the old Village Communities, when strangers were allowed to cultivate on condition of giving the Government share of the produce and *an additional share* for the use of the zemindár or other person who had rights of ownership in the land and by whose permission they cultivated. This *additional share* was rent—rent paid in kind, as all rent must have been paid before the use or general use of money.[2] It would be profitless to attempt to

[1] *Maine's Village Communities*, page 180.

[2] Mr. Edward Colebrooke, writing in 1819, and epitomizing the reports of fourteen Collectors in the North-Western Provinces, says:—"It will appear that for the most valuable articles of culture in all the districts and for every sort of produce in some districts money-rents obtain universally and that *the tenures in kind under the several denominations of Umli, Bhauli and Bhattai prevail only for the inferior sorts of grain, and in those districts or those particular parganas where, from the nature of the soil, the want of means for artificial irrigation, and the consequent dependence on the uncertainty of seasons, the tenants are not disposed to subject themselves to a certain payment.* . . . The proportion of the crop, whether taken by the landholders in kind or commuted for its value in money, is regulated by custom which varies according to the nature of the soil *from one-fourth* and less in lands newly reclaimed *to one-half* in lands under full cultivation. . . . . With regard to the *nakdi* tenures or money-rents, they are found to be regulated in only few parts of these provinces by established *pargana* rates. In general they appear to be annually adjusted by mutual agreement. The tenants themselves are stated to be adverse from binding themselves to a fixed payment beyond the current year in consequence of the uncertainty of the seasons." *Letter to Governor-General, dated 5th January* 1819. The same aversion to bind themselves down to a fixed agreement was found amongst the *raiyats* in Bengal—See *Mr. Shore's Minute of 28th June* 1789. In the Rai-raiyan's answers (*Appendix No.* 17 *to Mr. Shore's Minute*) it is stated that in the *Subah* of Bengal the *raiyats* always paid their rents in money—that the crop of the *khamar* land is usually divided between the *zemindárs* and *raiyats* in equal proportions, though in some places the latter get more and in others less; but for this fluctuation there is no specific rule; that in the *Subah* of Bahár custom has established the share of the zemindár at 22½ seers; and that of the *raiyat* at 17½; but variations from these proportions occasionally occur. Even when rents were agreed to be paid in kind, it was very common for the zemindár to commute his share for a money payment, the commutation price being adjusted while the crops were still on the ground—*Mr. Holt Mackenzie's Minute*, section 428. Rents in kind are not uncommonly paid in India at the present day. The North-Western Provinces Land Revenue Act, XIX of 1873, empowers Settlement Officers to commute these rents for a fixed money-rent (sections 73—74). The Oudh Rent Act, XIX of 1868, contains similar provisions (section 28).

conjecture what might have been the possible development of this germ of the principle of rent, if Hindú society had not suffered the effect of a Mahomadan invasion. The alteration of system which was the immediate result of that invasion, and of the consequent setting up of a new Government, prevented any such development. The system of the Mogul Government and that prescribed by the Mahomadan law recognized only two persons as having a fixed interest in the soil, *viz.*, the sovereign and the cultivator, and did not admit as a principle any other general limit to the Government demand than the amount which the cultivators could afford to pay. To leave a rent therefore to any intermediate class standing between the Government and the cultivators was no part of the Revenue constitution, which immediately preceded our rule.[1] Such were not, however, the principles of our system. In dealing with Bengal, we sacrificed everything in order to create a class of *Receivers of rent*; and if we did not go quite the same length in settling the provinces subsequently acquired, we certainly gave the tenderest consideration to the claims of all who asked to occupy the place of this intermediate class. If we did not create the principle of rent, we certainly restored it to the same, if not to a more forward stage of development than that in which the Mahomadan invasion found it.

§ 60.—But there is one sense in which it is absolutely true that rent is a British creation. Competition rent—that rent of which the principle is explained by Western Political Economists—had no existence in India before British rule; and, so far as it has yet come into being,[2] it is due wholly to the influence of the British Government and to results which have accrued therefrom. That state of things in which land is regarded merely as one of the many modes of investing capital, and is competed for up to the point at which it yields a profit at least equal to that which can be obtained from other

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[1] See *Mr. Holt Mackenzie's Minute*, sections 317 and 348.

[2] Competitive rents now exists in Bengal to a considerable extent. Such land as is not in the possession of raiyats having right of occupancy is more less competed for. In some districts the competition is tolerably keen. Raiyats having a right of occupancy are also more and more getting into the habit of sub-letting; and thus a fresh class of petty middlemen, ignorant and useless, if not absolutely pernicious, is being created. Whatever be the merits of the Permanent Settlement, it is obviously unfair to the zemindárs that this class should in this way appropriate the increase. It is further impolitic, because it

objects of investment, never existed in India. At no period antecedent to our rule did population reach a point which rendered it necessary to cultivate the worst land and resort to improved means of agriculture in order to raise from the soil food sufficient to feed the people of the country. In favourable seasons the land with little labour gave them enough and more than enough for the year's supply. Seldom looking further, or perhaps careless, if indeed they were permitted, to accumulate a store which might tempt the cupidity of those in authority—when the season was very unfavourable and famine came amongst them, they regarded the visitation as a decree of Fate, and passively endured as inevitable what they never imagined that human polity could alleviate or prevent. There was no competition for land as a means of creating capital out of capital, or of raising additional food to feed an increase of population, or provide against years of scarcity. There was more land than there were men to till it or flocks to graze upon it : and the *raiyats*, who were pressed in one place beyond what they would or could bear, removed to another place where the interests of a new master were the most effectual barrier to oppression. Thus, if there were competition at all, it was competition amongst the zemindars for raiyats, not amongst the raiyats for land. But in truth there was no competition, and such removals were few and exceptional.

§ 61.—The share of the produce to be taken by the ruling power or by those who stood in its place over the cultivators was originally fixed by the Hindú Code at *one-sixth* : but when those who took were the only persons who had the power to set limits to what was to be taken, this proportion was not long maintained, and *one-fourth*, *one-third*[1] and finally *one-half*[2] became the normal share of the Ruler. Even this proportion was exceeded, when the authority which prescribed

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tends to rack-renting and the creation of wretched cottiers. It would not be unreasonable to enact that any raiyat *regularly sub-letting* his land should forfeit his right of occupancy. In *Bibi Sahadwa and others* v. *M. Smith*, XII B. L. R., 82, it was held that, where a raiyat having a right of occupancy transferred his rights, the zemindár could sue the transferee to recover possession of the soil. Leasing is only another form of assignment. There are many arguments in favour of the policy which protected the actual cultivator : there are none that I know which would justify his conversion into a petty middleman.

[1]This was the proportion claimed by Akbar.

[2]According to a *farmán* of Aurangzíb.

these bounds ceased to be operative, and individual rapacity acknowledged no limits save the powers of endurance of those upon whom it preyed. But whether the State itself or those who usurped its functions determined the proportion which was to be taken from the cultivators, it is clear that *they* had no voice in fixing this proportion, and that it was settled not by mutuality of contract, but by arbitrary power, to the behests of which there was no alternative but slavish submission. No part of what was thus taken by or on behalf of the State was *rent*, and there is no doubt that no such thing as *rent* existed under the Mahomadan rule.

§ 62.—The system introduced by the English was avowedly directed from the very first to the creation of a class of rent-receivers.[1] The Permanent Settlement of Bengal, in leaving the majority of the tenant class at the mercy of the new proprietors with vague promises of future protection, afforded a good opportunity for putting up peasant holdings to competition and creating competition rents, had such a creation been consonant with the ideas and requirements of Indian society. But the conditions of the country were in no way favourable to such a creation. Neither tradition nor custom suggested that the opportunity should be turned to advantage in this way. It was indeed turned to advantage, but in a manner wholly conformable with native ideas and previous usage. Zemindárs were necessarily invested with large powers over their *raiyats* in order to compel payment of rent[2] and so be themselves able to discharge the Government revenue. They could by law have them seized and brought to the *zemindari* Kachahri.[3] When the law gave such large powers, it may easily be imagined that the exercise of them was not always confined to the exact limits

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[1]The Permanent Settlement of Bengal was notoriously so directed; all settlement proceedings in the Upper Provinces, if not expressly aimed at accomplishing this single end at least assumed it as a thing to be accomplished. Mr. Holt Mackenzie in a note to his able Minute says:—"The moral and political advantages derived from the existence of rent-holders is a separate question; they are indeed incalculable whereas in our country they give a body of men to manage almost the whole internal government of the country and to secure its political and civil freedom. We may hope that the landholders of this country may gradually be brought to contribute in their degree to the same ends here." We legislated from the beginning for the *recovery of rent.*

[2]See Reg. VII of 1799 and *post.*

[3]This power existed down till 1859, when it was taken away by Act X of that year.

set by law, more especially when those over whom they were exercised, having been long accustomed to despotic authority and unresisting dependence, were at first ignorant that any degree of liberty had been conferred upon them and were long in learning the exact measure of their newly created rights. In such a state of things zemindárs or their agents found little difficulty in exacting from the raiyats by *abwábs*[1]

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[1]*Abwáb* is the plural of *bab*=a head, an item; and means "items," or "miscellaneous items," *i.e.*, of taxation. When the Mogul authorities desired to levy an additional sum, the usual way of accomplishing their object was not by increasing the original amount of revenue agreed for with the zemindár or farmer, but by imposing a tax for some particular purpose, which tax was levied in a fixed proportion to the original *jama* or revenue. The purposes or pretexts, for which these miscellaneous taxes or *abwábs* were imposed, were so numerous that it would be difficult to give a complete list of them. A few will suffice as an example: *Chauth Maratta* in order to pay the tribute of one-fourth of the *jama*, levied by the Marattas; *abwáb faujdari*, or fees for the support of the chief Police Magistrate and administration of criminal justice—*abwab rahdari*, for the repair of roads, which never were repaired—*zar mathaut* consisting of four items, *viz.*, presents at the Punya or annual settlement of the revenue; charge for *khiláts*, or honorary dresses for the members of Government; charge for repairing the banks of the river at Murshedabad; and fees to the Nazir who commanded the escort which brought the collections to head quarters—*khas navisi*, fees for the Government accountants—*sarf-i-sikka*, an impost to cover the loss on the exchange of coins of different mints. The zemindárs in their turn levied from the raiyats all the *abwábs* that they themselves had to pay, generally contriving to make a profit out of the transaction; and they further imposed additional *abwábs* of their own devising and for their own benefit, *e.g.*, *abwábs mehmani*, to defray the expenses of the zemindár on his visiting the village; *haldári*, a tax on marriages, any unusual occurrence, a Governor's visit, or a petty war on some distant frontier was and is made a pretext for imposing a new cess. One ingenious zemindár has within the last few years made the construction of a *line of telegraph* a ground for a fresh contribution which, the raiyats were taught to believe, went to the maintenance of the posts and wires. In the district of Jessore, before the legislation of 1893, out of fourteen articles imposed upon the zemindárs by the Názim, twelve were levied from the raiyats, and *nineteen other articles in addition*. The cesses levied from the raiyats were variously regulated according to the number of months or by other distinctions, but were generally calculated at so much in the rupee, the first on the original (*asil*) rent and subsequent ones on the *asil* plus the previous cesses. The zemindárs and other proprietors, being themselves exempted by the Permanent Settlement from the imposition of any new *abwábs* or cesses to Government were directed in concert with the raiyats to revise the former cesses levied upon the latter, and to consolidate the whole with the *asil* into one specific sum, after which they were strictly forbidden to impose any new *abwábs* upon

and other means a very considerable portion of the surplus which was the natural result of peace, prosperity, and progress. The law had, however, declared *abwábs* and other such means to be illegal : and in the course of half a century, when a new generation had arisen, to whom the oppressions of the Mahomadan amils and farmers were but hearsay, while the diffusion of knowledge taught them present liberty, the *raiyats* came gradually to know their rights. Prompted by self-interest, they threw off the old veneration for custom, and, with the assistance of the numerous Courts constituted all over the country in order to bring justice home to every man's door, they resisted what was illegal, not so much because it was illegal as because a conflict of interests had arisen, which sooner or later must have brought resistance ; and this resistance, if not accelerated, was certainly strengthened by finding the law on its side.

§ 63.—While the zemindárs had been, by means not recognised by law and uncertain in their application and results, endeavouring to obtain what share they could of the increasing value of the produce, the *raiyats* unrestrained by any

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the raiyats under any pretence whatever. Every such exaction was to be punished by a penalty equal to three times the amount imposed for the entire period of the imposition (see ss. 54, 55. Reg. VIII of 1793 ; s. 3, Reg. V of 1812, which declares all stipulations for the payment of *arbitrary and indefinite cesses* to be null and void; cl. 1, s. 9, Reg. VII of 1822 ; s. 9, Reg. IX of 1825 ; and s. 5, Reg. XXX of 1803). Notwithstanding these strict prohibitions cesses have continued to be imposed down to the present day. The subject recently attracted the attention of the Bengal Government, and inquiries were instituted, which showed that these *abwábs* are of general prevalence all over Bengal, and that they certainly have not diminished in numbers since the Permanent Settlement. In the district of the 24-Parganas round about Calcutta *no less than* 27 *different kinds of cesses* were found to be usually levied at this moment (*Report on the administration of Bengal*, 1872-73, pp. 23, 29). The fact really is that the imposition of fresh *abwábs* is a mode of enhancing rents sanctioned by long custom and acquiesced in by both parties. Mr. Harington speaks of cesses as being in fact a considerable part of the neat rents (Analysist, Vol. II, p. 19), and, in the words of the Bengal Administration Report, " at present the people certainly prefer to pay moderate cesses to an enhancement of rent." They regard an enhancement decree as the fixing of a new *asil* upon which future cesses will be sure to be calculated, and have just the same dislike to it as their forefathers had to *pattas* in which the former *asil* and *abwábs* were to be consolidated into a fixed sum under s. 54, Reg. VIII of 1793.

checks on population,[1] had been rapidly increasing in numbers, and thus a new demand of a very urgent nature was made upon the distribution of the increase. Amid these conflicting interests the Legislature stepped in, took away from the zemindárs all coercive authority over the raiyats; and regulated by an Act, which was to be administered by the Courts of Justice, the principles upon which the increase is to be apportioned between landlords and tenants. The strong hand of authority was at the same time interposed so as to render all action save through the medium of the Courts well-nigh impossible. The procedure of those Courts rendered it necessary that every individual *raiyat* should be sued separately. To institute and carry on to a successful issue so many individual suits as thero were raiyats who would not otherwise come to terms, required, capital[2] which few

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[1]The population of Bengal, Bahár and Orissa was first estimated at ten millions. Sir William Jones in 1787 calculated it to be *twenty-four* millions. This however included Benares. In 1820, it was computed at 30 millions. The Select Committee in their Fifth Report (1812) took it to be 27 millions. Mr. Adams in 1835 made it out to be 36 millions. Mr. Dampier, the Superintendent of Police in Bengal, estimated the population of the Lieutenant-Governorship in 1844, when it included nearly the same territories as now, at a little over 31 millions. Down to 1870-71 the population was officially assumed to be 41 to 42 millions, but the census of 1872 showed it to be 67 millions. Everyone marries—few marriages are unproductive—nor is an extraordinarily high birthrate counterbalanced by a high rate of mortality amongst children in a country where cold and its fatal consequences are unknown. A population increasing at this extraordinary pace swallows up all increase in produce and in the price of produce, and leaves but a small share to reach the landholder in the shape of *rent*, or the Government in the shape of *revenue*.

[2]It is a curious fact that in the only districts (Nadia and Jessore) in which the enhancement provisions have yet been effectually worked, the experiment was made with English capital belonging to indigo-planting firms, the result being the ruin of a good many of them. These firms held considerable estates in ijarah or patni or similar tenure. The raiyats on these estates had long cultivated indigo upon a small portion of their holdings at rates which originally were, or in course of time came to be, unremunerative. So long as they cultivated indigo, they were allowed to hold the whole of their lands at the former low rates of rent. Through causes which it is here unnecessary to mention, they very generally refused to cultivate indigo any longer on the old terms, whereupon the Planters set the law in motion to enhance their rents. A large number of enhancement decrees were passed, but their effect in creating a general rise of rents cannot be exactly estimated, as full operation was not given to them, a sort of compromise being made in many cases, by which the Planters gave up part of the increased rent on condition of the raiyats cultivating indigo.

zemindárs possessed; and the prospect of success was very problematical when a few landlords and their servants on one side were opposed by the whole body of tenants on the other side, and witnesses[1] of the essential facts were not therefore obtainable. The *raiyats*, released from their former subjection, soon turned, as the history of mankind has taught us to be usual, their liberty into license; and they have now prepared themselves by combination against all attempt upon the position which they have occupied. The difficult problem which the Government of Bengal has at this moment to solve is to devise some efficient machinery for apportioning the increase of the value of the produce of the soil between

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[1]When enhancement is sought on the ground that the quantity of land held has been proved by *measurement* to be greater than the quantity for which rent has been previously paid, the question in dispute is susceptible of easy proof. Raiyats had and have a great aversion to measurements, and they used effectually to prevent this ground of enhancement from being worked by not attending or pointing out their lands, when a measurement was being made. This difficulty has however, been got over by making forfeiture of their rights the penalty of such wilful recusancy. When enhancement is sought on the ground that the rate of rent paid is below the *prevailing rate* payable by the same class of raiyats for land of a similar description and with similar advantages in the places adjacent, witnesses from the vicinity are indispensable in order to succeed. The *pargana rate* used formerly to be the *prevailing rate*, but *pargana rates* were declared by the Legislature more than half a century ago to have become very uncertain (s. 5, Reg. V. of 1812, and see *Mr. Colebrook's Minute of 1st May* 1812) The new law has not provided an adequate substitute for the provisions contained in s. 9, Reg. XXX of 1803 and ss. 6, 7 and 8 of Reg. V of 1812, as to settling rates. If there is no prevailing rate, which under existing circumstances gives a fair share of the increase to the landlord, it is necessary to take the remaining ground of enhancement, *viz.*, that the value of the produce or the productive powers of the land have been increased otherwise than by the agency or at the expense of the raiyat. Here, if it be sought to prove an increase of the productive powers of the land, witnesses from the spot are necessary. The inquiries involved in this ground of enhancement are so extensive and the production of the evidence essential to success is a matter of so great expense, that such suits are soldom brought to a successful termination. The cost of success in a single suit is out of all proportion to the advantage gained therein; and where the raiyats getting to understand the principle "*res inter alias actæ*," defend every individual case, the zemindár is almost compelled to stop, more especially if his funds fail, which not infrequently must happen, when the payment of all rent is suspended pending the dispute. It may be doubted if the existing procedure of a Civil Court is the best machinery for conducting the inquiries involved in this class of cases.

landlords and tenants with due regard to the rights or supposed rights which owe their origin to unsystematic legislation, irregular custom and the non-uniform action of the Courts.

§ 64.—In the North-Western Provinces as our system was more deliberate from the commencement, so it has been worked in more intimate association with the people and their progress, which it has at once accompanied and directed. Here, as in Bengal, tenant-rights were acknowledged, which were irreconcilable with a power in the landholders to eject those tenants who would not pay as much as the landlord demanded or any other person was willing to give—a power almost essential to the creation and existence of competition rents. But, instead of leaving those rights to be defined and developed under the misguiding influences of usage and tradition fraught with all the evils which it was the first object of our system to eradicate, we set about ascertaining and defining them by a procedure, which year by year threw fresh light on the subject with which we had to deal, and increased our knowledge by the added experiences of the most able officers, working with undivided attention in a single direction. If competition rents did not come into being in Bengal under the circumstances already described, much less were they likely to be created under the operation of rules, which had for one of their principal objects the preservation of tenant-rights and the avoidance of the admitted mischiefs which had ensued in Bengal. If the landholders of the Lower Provinces failed to work the provisions of the enhancement law successfully when the whole profit of success was to be their own, it was not very probable that the landholders of the Upper Provinces would be found to have brought them into more effectual operation, when, under a system of periodical settlements, and in consequence of the Government demand of revenue being increased for each period, a large share of the profit was to go to the State. And such, in practice, has proved to be the result[1] notwithstanding greater

[1]In an *extra Supplement to the Gazette of India*, published 3rd October 1871, will be found a series of papers which show that the prevailing rates of rent in many estates are far below the average point to which they might fairly and reasonably be enhanced. It was in consequence found impossible to assess such an amount of Government revenue as would justify a permanent settlement, regard being had to the equitable claims of the State. The permanent settlement of all estates so circumstanced has been in consequence suspended, pending a reconsideration of the entire question—See *post*, §§ 170-176.

facilities of procedure[1] and the employment of a special class of officers, whose training and experience have pre-eminently fitted them for dealing with this peculiar class of cases.

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[1]One of those facilities is that in proceedings before a Settlement Officer for enhancement, abatement or commutation of rent, any number of tenants may sue and be sued collectively (see s. 75 of Act XIX of 1873). Where it is sought to enhance the rents of all the raiyats in a village upon a common ground, there can be no doubt as to the propriety of this procedure. In the Court of Chancery in England, when one *general right* only is claimed by a bill, though the defendants have separate and distinct *interests*, a demurrer for multifariousness will not hold (see *Daniell's Chancery Practice*, 5th Ed., p. 286, and cases there cited). It might be argued that an increase in the *value of produce* as a ground for enhancing the *rate* of rent is a cause of action common as against the raiyats of any single estate, uniformly affected by such increase; and that even under the Code of Civil Procedure, a single suit might be brought against any number of such raiyats, when this is the particular ground of enhancement alleged.

## CHAPTER III.

### The Administration of the Land Revenue.

§ 65.—The Tenure of Land is so intimately connected with the Administration of the Land Revenue, that a considerable amount of matter appertaining to the subject of this chapter has already been necessarily anticipated. We have seen that a custom prevailed from the oldest Hindú times by which the sovereign took a share of the produce of the land; that this custom was continued by the Mahomadan conquerors, the share being however gradually increased until it reached one-half; that, in a society almost altogether agricultural, this share of the produce formed the chief source of revenue, the collection and management of which was, in consequence, a subject of the first concern and importance to every successive Government. As the State became a more extended and complex institution, the collection of the whole of the revenue in kind became excessively inconvenient and must have been in the end impracticable. It therefore became highly expedient that some effectual means should be devised of at the same time regulating the collections and securing in whole or in part a commutation of produce into money. The first systematic attempt made to effect this object is to be found in the *Institute of Timúr*. He directed that of the produce of cultivated lands, made fertile by the water of canals or by perennial springs or rivers, *two-thirds* should go to the cultivator and *one-third* to the royal treasury; that, if the subject consented to pay the tax for the restricted lands in specie, the amount should be fixed according to the current price of grain and paid to the soldiers (to whom no doubt the revenue was assigned for their maintenance); that, if the subject was not satisfied with this mode of collection and the division of the produce into three parts, the restricted lands should be divided into first, second and third *Farrib*; that the produce of the first class should be estimated at three loads, of the second class at two loads, and of the third class at one load, half to be estimated as wheat and half as barley, and of the total amount *one-half* should be collected; that, if the subject should be still unwilling to pay the tax in kind, the value of a load of wheat should be fixed at

five *miskâls*[1] of silver and a load of barley at two and a half *miskâls*, and that the duty of the *killâh*[2] should be exacted over and above; that the rest of the lands, those which produced in the autumn and in the spring, and in the summer and in the winter, and the land which depended on the rain for fertility, should be divided into *farribs*; and that of the produce of those which were numbered, a third or a fourth should be collected; that the duties on herbs, fruits and other productions of the country, on reservoirs of water, commons, and pasture lands shoud be fixed according to the ancient and established practices, and, if the subject should not be content therewith, the collections should be settled according to the *Hast-o-búd*.[3] Whoever undertook the cultivation of waste lands, or built an aqueduct, or made a canal, or planted a grove, or restored to culture a deserted district. from him nothing was to be taken in the first year, and in the second year what he voluntarily offered was to be received, in the third year the duties were to be collected according to the regulation.[4]

§ 66.—Shír Sháh (A. D. 1540—1545) made the next attempt to introduce a regular system for the assessment and collection of the land revenue, but did not live long enough to carry his plans into general effect. He fixed the share of the State at one-fourth of the produce. What he left undone was, however, effectually performed under the auspices of Akber (latter half of the sixteenth century) by Rája Tódar Mal.[5] The first step taken towards effecting an accurate assessment was to make a *measurement of the land*; and, in order to do this the more effectually, one uniform standard was substituted for the various measures in use throughout the country.[6] The next step was to ascertain the produce of

[1]A *miskâl* is equivalent to 63½ grains Troy.

[2]*Killâh* means "a fort."

[3]A comparative account showing the present and past produce of an estate—an examination of the value of the crop before it is cut.

[4]*Timúr* or Tamerlane (corruption of *Timúr lenk* or Timur the lame, he having been lamed for life by a wound in the thigh) invaded India, sacked and burned Delhi in 1398 A.D. As he left India the following year and never returned, his system could scarcely have had any very radical operation.

[5]Called likewise, though improperly, Túran Mal or Tooren Mul. He was also distinguished as a military commander.

[6]The *guz*, or measuring yard, was fixed at forty-one fingers. Sixty *guz* made one *tanáb*; and a square of sixty *tanáb*, or 3,600 square yards, made one *bighá*. The standard Bengal *bighá* is now 14,400 square feet, or 1,600 square yards, the English statute acre being 4,840 square

each *bighá* of land and to fix the proportion payable to Government. The land was divided into three classes according to its powers of production. The quantity of each kind of produce yielded by a *bighá* of each class was then ascertained: and average of the three was taken, and the Government demand was fixed at one-third of this average. *Púlej*, or land cultivated for every harvest and never allowed to lie fallow, paid the full demand every year. *Perauti*, or land which had to be left fallow occasionally in order to recruit its powers,[1] was charged only when under cultivation. *Checher*, or land which had lain fallow three or four years in consequence of having suffered from excessive rain or inundation or other cause, paid two-fifths in the first year, three-fifths in the second year, four-fifths in the third and fourth years, and the full rate in the fifth year. *Banjar*, or land which had been out of cultivation for five years or more was assessed at rates still more favourable.

§ 67.—Having fixed the Government share of the produce, Todar Mal next proceeded to lay down rules under which such share might be commuted for a money payment. The prices current for the nineteen years preceding the survey were obtained from every village, and the value of the produce was calculated according to an average of these prices. The raiyats were allowed to pay their revenue in money or in kind, as they found most convenient. If they preferred to pay in kind, the division of the produce might be made either by an estimate of the crop while standing (*kankút*), or by a division of the grain after it was reaped and gathered (*bahaolí* or *batai*). The rules for commutation were occasionally revised according to market rates. The settlement was at first made annually, but this was found to be so inconvenient to Government, and so vexatious to the raiyats, that settlements were afterwards usually made for ten years on an

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yards. There is no more fruitful source of fraud and contention at this moment in Bengal than the different lengths of the measuring rods. The Government standard has not been generally introduced; and whenever a *zemindár* proceeds to measure the lands of the *raiyats*, there is generally a dispute as to the length of the pole, the *raiyats* claiming the use of a long pole, which makes their land less on being measured; the zemindár claiming a shorter pole which makes the land more, and therefore enables him to demand more rent.

[1]In many parts of India, but especially in Bengal, no proper rotation of crops is practised, and little or nothing is done in the way of manuring. Land is commonly restored by letting it lie fallow every fourth year.

average of the preceding decennial perod.[1] If the merits of any reform are fairly judged by results, the system of Tódar Mal must be held to have proved beneficial to the raiyats and just to the State, seeing that it lasted without material variation for more than a century, during which time the country is said to have been in a high state of cultivation, and the raiyats in a most prosperous condition.[2]

§ 68.—Tódar Mal's settlement of the súbah of Bengal was made in or about the year 1582 A.D. : and the annual amount of revenue assessed by him was Rs. 1,06,93,152. The first increase of this assessment was made seventy-six years afterwards in 1658 by Shujá Khan,[3] who raised the annual revenue to Rs. 1,31,15,907. No further material enhancement as made until the time of Jâfíer Khan,[4] otherwise known

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[1]A full account of Akber's reforms is contained in the "*Ayeni Akberi*," tramslated by Mr. Gládwin. The country was divided into sections each yielding a *kror* of *dáms*=Rs. 2.50,000, the collector of was called a *krori*. Farming was not practised, and the collectors were enjoined to deal with individual raiyats. In the *Answers of Gholam Hossein Khan, Appendix No.* 16 *to Mr. Shore's Minute of* 2*nd April* 1788, it is stated that in Akber's time and long after the rents were paid in kind. In order to preserve the accounts necessary to Tódar Mal's system, the office of kanungo (literally "expounder of the laws," from *kanun*=laws, and *go*=to speak) was created ; and in the custody of this officer all the records of the public accounts were kept. The *patwári* kept similar accounts for the village, and forwarded annual returns to the kanungo. Mr. Shore remarks that the policy of the Mogul administration taxed improvement. This is true, as the assessment might be raised upon a decennial revision. The defect in this policy was that it drew no distinction between improvement effected by the labour cr capital of the cultivator, and improvement due to causes unconnected with the individual.

[2]*Answer to* 38*th Question by Gholam Hossein Khan, Appendix No.* 16 *to Mr. Shore's Minute of* 2*nd April* 1788, who says that the institutes of Akber continued in use until the time of Bahádur Sháh (1707—1712 A.D.)

[3]See *ante*, p. 6.

[4]He was born of Bramin parents. Brought while an infant by a Mahomadan, he was carried to Persia, and there reared in the creed of Islam. On the death of his Master, he found his way to the Dekkhan, and got into the service of Alamgír, who gave him the Díwání of Heiderabad, with the title of *Kar Tallab Khan*. From that he was transferred to the same post in the *súbah* of Bengal, with the title of *Murshed Kúli Khan*. He removed the seat of Government in 1707 from Dacca to Múrshedabád, which he called after himself. He used to say that a Mahomadan was a sieve, which retained nothing, and that a Hindú was a sponge, which might be squeezed at pleasure. accordingly he employed Hindús only in the collection of the revenue, and these he squeezed effectually, when he suspected that the revenue

as Murshed Kúli Khan, who having put aside the zemindárs and others who stood between the Government and the cultivators, managed the collection of the revenue entirely by his own officers. By these means, and by supplying the raiyats with implements of husbandry and with advances of seed grain, he increased cultivation, and augmented the revenue to Rs. 1,42,88,186. He imposed the first of the *subahdari abwábs*, or imposts, namely, *khasnavísi*, which was then but a trifling fee to the *khalsa*, or treasury officers. Jâfíer Khan died in 1725 and was succeeded by his son-in-law Sujáh-ud-dín, whose assessment for 1728 was Rs. 1,42,45,561. He set at liberty the zemindárs who had been confined by his predecessor, on condition of their agreeing to pay the amount of revenue which had been assessed upon their zemindáris. He imposed four additional *subahdari abwábs*. Sujáh-ud-dín was succeeded in 1740 by Aliverdí Khan, who died in 1756. Three further *abwábs* were imposed in his time, one of which was the famous Maratta chauth.[1] The highest assessment before the time of British rule was made by Kásim Ali, who in 1763 raised the revenue to Rs. 2,56,24,223. Mr. Shore thinks[2] however that, notwithstanding the extreme rigour of his proceedings, there is no proof that this amount of revenue was ever actually realized; and that, even if it were realized for a year or two the country was then incapable of bearing this assessment permanently.

§ 69.—When, as a result of the grant of the Díwání in 1765, it became necessary for the Company's servants to undertake the administration of the land revenue, they were placed in one of the most extraordinary positions recorded in

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had been absorbed, so that the full amount did not reach the treasury. He divided the *súbah* into thirteen *chaklas*, over each of which he placed a collector. Many of these collectors subsequently developed into zemindárs. The former zemindárs were put by him in close confinement, in which many of them were detained during the whole of his tenure of office, while his Bengali amils collected the revenue. His exclusive employment of Hindús goes a long way to account for the fact that, when we obtained the Díwání, we found all the zemindárs to be Hindús, though the Government was Mahomadan.

[1]Mr. Shore says that the impositions of Jâfíer Khan, Sujáh and Aliverdí amounted to an increase of about 33 per cent. upon the assessment of 1658, while the increase of the zemindárs's exactions from the raiyats could not be less than 50 per cent.—*Minute of 18th June* 1789, § 41.

[2]*Id.* §§ 47. 77.

history. Ten years before the English had been utterly expelled from the country, of which they now assumed the *de facto* government, having been occupied solely in the pursuit of trade, they had no previous means of acquiring that knowledge and experience which were necessary in order to enable them to take with confidence the helm of affairs. The system of administration, which had existed in the country, was not a system of written rules and plain principles, which they could learn by careful application. It was a tangled unsystematic mass of chicanery, dishonesty and oppression. Those upon whom they were compelled to rely for instruction, were prompted by self-interest to mislead and misinform, and neither morality nor religion withstood the prompting. Much was learned only to be abandoned because its practice was not consistent with those principles of humane and equitable government, which, professed from the beginning, have been steadfastly adhered to and at length firmly established.

§ 70.—In the year following the grant of the Díwání, Lord Clive took his seat as *Díwán* at the *Punyá* or annual ceremony of settling and commencing the collection of the revenue at Motighil near Múrshedabád. The districts of the Twenty-four Parganas, Burdwan, Midnapore, and Chittagong, which had been previously acquired,[1] were at this time under the management of the Company's servants; but they were not in a position to take the whole of Bengal, Bahár, and Orissa under similar management. A native *Náib* or *Deputy Díwán* resident at Múrshedabád, and under the supposed control of the European Resident, and a similar officer for Bahár under the control of the European Chief at Patna, conducted the collection of the revenue without any change of the former system until 1769. In this year Supervisors were appointed (16th August) to superintend, in subordination to the Resident, the native officers employed throughout the country in collecting the revenue and administering justice. They were instructed "to ascertain in a minute, clear and comprehensive manner" the history of each district from the time of Shujá Khan's *subahdarí*, this being considered the "era of good order and good government;" the state, produce and capacity of the lands; the amount of revenue, cesses and other demands levied from

[1]See *ante*, p. 9.

the *raiyats*, the manner of collecting them and the gradual rise of every new impost; the nature and extent of the different manufactures, and the impositions levied on the manufacturers, with other particulars necessary for the regulation of commerce; and whatever might tend to a knowledge of actual abuses and promote the reform of them in the administration of justice.[1]

§ 71.—In 1770 two Revenue Councils of Control were established, one at Múrshedabád, the other at Patna. During the same year, a terrible famine is said to have destroyed one-third of the inhabitants of Bengal. In 1771 the Court of Directors sent out instructions[2] "to stand forth as *Díwán* and by the agency of the Company's servants to take upon themselves the entire care and management of the revenues." The Naib Díwáns at Murshedabád and Patna were in consequence removed; and the Supervisors were styled "Collectors," a fixed *Díwán* being joined with the Collector in the "superintendency of the revenues." A Board of Revenue was now constituted at the Presidency, consisting of the Governor and Members of Council and an Accountant-General with assistants. The Khalsa or Exchequer and the Treasury were at the same time removed from Múrshedabád to Calcutta.[3] It was resolved (14th May 1772) to conlude a settlement of Bengal and Orissa for a period of five years, Bahár having been already settled for a term of years; and, in order to make this settlement, a Committee, consisting of the President (Mr. Hastings)[4] and four other members, was appointed to go on circuit. The giving of presents (nazars and salámís), usually presented at the first interview as marks of subjection and respect, was directed to be totally

[1]See *Harington's Analysis*, vol. ii, p. 4. Some wholesome directions for their conduct were also given them. "Depend on none, where you yourself can possibly hear and determine. Let access to you be easy, and be careful of the conduct of your dependents. Aim at no undue influence yourself, and check it in all others. A great share of integrity, disinterestedness, assiduity, and watchfulness is necessary, not only for your own guidance, but as an example to all others, for your activity and advice will be in vain, unless confirmed by example."

[2]General letter of 28th August 1771.

[3]One of the expressed objects of this change was that the eyes of the people might be turned to Calcutta as the centre of Government and to the Company as their sovereign, that Calcutta instead of Múrshedabád might become the capital.

[4]He did not, however, go on circuit. The four junior Members alone went.

discontinued as well to the superior servants of the Company and the Collectors, as to the zemindárs, farmers, and other officers. The system established in 1772 was altered in November 1773, owing to instructions received from the Court of Directors. The European Collectors were withdrawn, and their districts left in charge of Native Díwáns or Amils. A *Committee of Revenue* was formed at the Presidency, consisting of two members of the Council Board and three Senior Civil Servants below Council. The three provinces were distributed into six divisions, the Calcutta division being placed under the superintendence of the Committee just mentioned; and the remaining five divisions under the superintendence of Provincial Councils stationed at Burdwan, Patna, Múrshedabád, Dinajpore and Dacca.

§ 72.—The high assessment imposed by Kásím Ali was found in the accounts, which came into the hands of try Company's servants upon the grant of the Díwání. Every endeavour was made to collect the revenue according to this assessment, but it was found impossible to do so partly because the amount was more than the country could bear and partly because the coercive means employed by the English Government were very much milder than those habitually resorted to under the previous native administration. The difficulty of realizing the revenue had been greatly increased by the famine of 1770; and the Company's Government were considerably perplexed as to the course to be pursued in order to place the finances in a position satisfactory to their honorable masters. The real object of the Committee of Circuit of 1772 was to ascertain the value of the country by letting it in farm for a term of years to the highest bidder. It was believed that the natives were better informed of the value of the lands than their rulers, and that few would engage to pay what they could not find means to discharge.[1]

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[1]*Mr. Shore's Minute, 18th June* 1789, § 95. It may be observed that when the English succeeded to the management of the revenue, no trace remained of the *jama* assessed on the raiyats by Tódar Mal (*id.* § 218). There are three modes of realizing the land revenue: (1) by employing Government officers to collect it direct from the cultivators; (2) by letting it out to farmers; (3) by settling with zemindárs or other middlemen having proprietary rights in the land. The *first* was Akbar's plan, and has been tried by the English in the Madras raiyatwári system. Its great disadvantage is that, for adequate execution, it requires a minuteness of inspection and a detailed superintendence, which are incompatible with the scale of European agency

Accordingly, the Quinquennial Settlement of 1772 was concluded for the most part with farmers. Experience showed this to be a mistake. Ignorant of the real capabilities of the country and incited by the hopes of profit formerly realizable under a Government which took no heed of oppression and extortion practised in collecting its own dues, speculators readily agreed for sums which they found themselves utterly unable to pay when the time for payment came.[1]

§ 73.—As the Quinquennial Settlement of 1772 approached its expiration, and these results became more apparent, it was deemed expedient to make an effort to obtain additional information as a guide to the best course to be followed in making a new settlement. Accordingly, three Covenanted Civil Servants, with an establishment of Amíns, were deputed (20th December 1776) to procure the most exact information as to the real produce or value of the lands ; and they submitted (25th March 1778) a report containing much valuable information. A preference was now given to the zemindárs, and the settlement was concluded with them, where they were willing to engage for a reasonable assessment. . Annual settlements were made for the years 1778, 1779, and 1780. Results being still unsatisfactory, another change was made in 1781. The Provincial Councils were abolished. and their duties transferred to a Committee of Revenue at the Presidency, consisting of four Covenanted Servants. In order to prevent any bad consequences of too sudden a change, the chiefs of the Provincial Councils were directed to remain in the temporary charge of their divisions until recalled by further orders. The office of the Khalsa or Exchequer was transferred to the Committee of Revenue, and alterations of detail were made in the manner of conducting business, the general intention

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possible with regard to financial considerations : and native agency has been found unsafe where so many opportunities of profit present themselves. The *second* plan was introduced by the Emperor Farokhsir (1713—1719). The objection to it is that the farmer having no permanent interest in the land is in no way restrained in his exactions by the prospect of resulting damage. The *third* plan was tried by the English in the hope that with those possessed of permanent proprietary rights regard for their own future interests would impose a check upon oppression pernicious in its ultimate results—(See in connection with this subject *Lord Moira's Minute of the 21st September* 1815, and *Mr. Shore's Minute of the 18th June* 1789, §§ 154—197.)

[1]See *Harington's Analysis*, vol. ii, p. 58, for an extract from this Report.

of all portions of the entire scheme being—"that all the collections of the provinces should be brought down to the Presidency, and be there administered by a Committee of the most able and experienced of the Covenanted Servants of the Company under the immediate inspection of, and with the opportunity of instant reference for instruction to, the Governor-General and Council."[1]

§ 74.—The plan of managing the whole business of the revenue at the Presidency without the assistance of responsible local agents was soon found to be impracticable, and the withdrawal of the Collectors to have been a mistake. Mr. Shore, writing in 1782, expressed his opinion that the real state of the districts was then less known and the revenues less understood than in 1774. The Committee of Revenue were accordingly instructed (7th April 1786), on proceeding upon the ensuing year's settlement, to divide out the *Huzúri*[2] *Mahals* into Collectorships in such manner that no one Collectorship should exceed in *jama* the sum of eight lakhs of rupees. In pursuance of these instructions, the provinces of Bengal and Orissa were divided into more than twenty Collectorships, exclusive of those which had been already established in Bahár, making thirty-six in all. In the following year a new division was proposed and approved by the Governor-General and Council (21st March 1787), under which the number was reduced to twenty-three or, including the salt districts, twenty-four. Immediately afterwards (8th June 1787) rules were made for the conduct of Collectors, and these rules were subsequently re-enacted with amendments in Regulation II of 1793.[3]

§ 75.—In accordance with the instructions of the Court of Directors,[4] a Board of Revenue was in 1786 (12th June) substituted for the Committee of Revenue. One of the members of Government was the President of this Board, which, in other respects, "was expressly constituted on the foundation and principle of the Committee." A regular set of rules was made for the guidance of the Board of Revenue in 1788 (25th April), by which the general functions of the Board were declared to be "deliberation, superintendence and control," and it was made their principal duty to take care that the officers under their authority should perform their

[1] Mr. Shore was one of the Members of this Committee of Revenue.
[2] *i.e.*, paying their revenue direct into the Government Treasury.
[3] Which is still in force in Bengal.
[4] Letter of 21st September 1785.

assigned duties with regularity, integrity, and assiduity. In order to enable them to carry out this "fundamental principle of their institution," they were invested with power to summon any officer to the Presidency to explain and justify his conduct, to impose a fine upon him not exceeding a month's salary, and to suspend him from office. Every instance of the exercise of these powers was to be reported to the Governor-General in Council.[1] The rules passed for the guidance of the Board of Revenue were incorporated in Regulation II of 1793, the essential portions of which are still in force in the territories subject to the Government of Bengal.[2]

§ 76.—After the expiry of the quinquennial settlement in 1777, annual settlements were made for several years, chiefly in consequence of the orders of the Court of Directors. The Company's Government were, however, strongly impressed with the mischief of this practice as being injurious to the landholders and their tenants, calculated to produce rigour and exaction towards the cultivators of the soil, discouraging to all improvements of agriculture, and consequently inimical to the general prosperity of the country.[3] All this they represented to the Court of Directors, and in 1776 they submitted a plan for making a life settlement with the zemindárs. The Court replied that "having considered the different circumstances of letting the lands on leases for lives or in perpetuity, they did not, for many weighty reasons, think it at present advisable to adopt either of these modes."

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[1]These powers have been only recently taken away, see ss. 30 and 31 of Reg. II of 1793, repealed by Act XVI of 1874.

[2]The *personnel* of the Revenue Department has been altered since 1793 in two material respects only, *viz.*, by the appointment of Commissioners of Revenue in 1829, and the employment of Deputy Collectors in 1833. It now consists of—I. The *Board of Revenue*, as to which see Regs. II of 1793, III of 1822, and X of 1831, *post*. II. *Commissioners of Revenue*, see Reg. I of 1829. III. *Collectors*, see Reg. II of 1793. IV. *Deputy Collectors*, see Reg. IX of 1833. V. *Assistant Collectors*, who are covenanted servants employed during the first years of their service in assisting the Collector and so learning the duties of the Revenue Department. For the *personnel* of the Revenue Department in the North-Western Provinces, see Chapter II (sections 4—35) of Act XIX of 1873. Native Díwáns used formerly to be associated with the European officers in the collection of the revenue. The Provincial Díwáns were abolished in 1786. The Collectors' Díwáns appointed by Reg. II of 1793 were abolished from the 1st January 1814, see s. 2, Reg. XV of 1813.

[3]*Harington's Analysis*, vol., ii, p. 172.

§ 77.—In 1784 was passed the 24 Geo. III, cap. xxv, the 39th section of which required the Court of Directors to give orders "for settling and establishing upon principles of moderation and justice, according to the laws and constitution of India, the permanent rules by which the tributes, rents, and services of the rájás, zemindárs, polygars, talukdárs, and other native landholders should be in future rendered and paid to the United Company." In obedience to these provisions, orders were transmitted[1] to the Government of India for making inquiry into the condition of the landholders and other inhabitants residing under their authority, and for the establishment of permanent rules for the settlement and collection of the revenue and the administration of justice, founded on the ancient laws and local usages of the country. The Court of Directors at the same time expressed their opinion that it would be most in accordance with the spirit of the Act to fix a permanent revenue on a review of the collections of former years; and that the settlement should, in every practicable instance, be made with zemindárs, rules being at the same time made for maintaining the rights of other classes according to the usages of the country. The settlement was directed to be concluded for ten years: and, when it was completed all the papers were to be sent to the Directors to enable them "to form a conclusive and satisfactory opinion, so as to preclude the necessity of further reference or future change."[2]

§ 78.—The Court of Directors assumed that the assets of the lands were sufficiently known[3] under the various attempts

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[1]Separate general letter of 12th April 1786.

[2]The Marquis Cornwallis, who came out as Governor-General in 1786, was the bearer of these instructions. It was intended to make the settlement permanent when finally approved.

[3]This was a fallacious assumption. Mr. Shore was of opinion that none of the previous settlements had been regulated by an accurate knowledge of the resources of the country. In fact, no such knowledge existed in any individual or any class, Native or European. All had been confusion and disorder under an arbitrary and despotic system, which produced amongst the people a mixture of simplicity, fraud, servility, and tyranny. What the resources of the country would be when allowed to run in fixed courses under an orderly and settled Government, no man could prophesy. Mr. Shore was of opinion that the revenue assessed at the time of the Permanent Settlement could not be increased (*Minute of 8th December* 1789). In eighteen years, it was found that the difference between the collections from the cultivators and the amount paid to Government had *trebled.*

made to ascertain them since 1765, and that no new scrutinies would be necessary. On receipt of these orders, however, the most careful local inquiries were made anew to obtain all possible information as to the past and present state of the country. The results of these inquiries were collected and incorporated in Mr. Shore's very able Minute of the 18th June 1789, which the Court of Directors characterized as a "comprehensive and masterly dissertation, which not only exhibited and methodized the most material parts of the reports from the Collectors of the Bengal Province but afforded new and important communications from himself, supplying in various respects what they wanted—delineating with great clearness the past financial system and history of Bengal—examining with candour those points in it which have been subjects of controversy—investigating with patient judgment the best system for the country, the difficulties which may attend it, the means of obviating them—and in fine proposing from the whole a set of regulations for carrying into execution the orders of the Court respecting the decennial settlement, so as to secure justice both to the Government and the subject, and to prevent in future those abuses which either exist, or may be apprehended in the detail of the collections:"—strong language of praise, but merited to the full. All that ability and assiduity could do to collect and digest all available information was done by Mr. Shore. His conclusions from the materials at his disposal were wholly warranted. That these conclusions would hold good in their operation under altered circumstances, he was himself the first to doubt; and, if his advice to await further experience before adopting final measures had been taken, the mistake of the permanent settlement would have been avoided.[1]

§ 79.—The reasons which decided the English authorities to settle with the zemindárs have already been stated.[2] Apart from the question of policy, there can be no doubt that they were perfectly justified in the course thus taken.[3] The

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[1]See *ante*, pp. 44, 45, *Note*.

[2]See *ante*, pp. 42, 43.

[3]Mr. Mackenzie (see Minute of 27th March 1786) argued that in a despotic state, the question was one which the sovereign alone was competent to decide; and that the Company had in this respect rights, equal to those formerly held by the Emperor. I include the sacrifice of the increase of revenue under the consideration of policy.

mistake of the measure lay in this, that sufficient active provision was not made for the protection of the rights of other persons, and that we erroneously persisted for years in regarding the relations between *zemindárs* and *raiyats* as analogous to, if not identical with, the mutual position of landlords and tenants in England. The reasons which recommended themselves for making the settlement on a fixed and permanent plan, and the benefits which were expected to result from the measure, are set forth in the sixth article of the Proclamation of the 22nd March 1793.[1] In addition to the reasons there given may be mentioned a very strong impression that the country wanted rest from constant change. Our first administration had been in the highest degree fluctuating and uncertain Ideas of improvement had been hastily adopted, unsteadily pursued, and finally abandoned from some supposed defect, which might have been foreseen at the commencement, or afterwards remedied with care. New measures had been substituted, followed, and relinquished with equal facility. The natives from these variations came to expect a change of system with every succession of men. The establishment of *principles* was therefore considered to be the great remedy for the evil consequences of constant fluctuation in the members of the governing body.[2]

§ 80.—After considering Mr. Shore's Minutes[3] and the other papers connected with the subject, the Governor-General in Council passed, on the 18th September and 25th November 1798 and 10th February 1790, those rules for the decennial settlement of Bengal, Bahár and Orissa,[4] respectively, which were afterwards, with modifications and amendments, incorporated in Regulation VIII of 1793. It was at the same time notified that the assessment fixed by this settlement would

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[1]See section 7 of Regulation I of 1793, *post.*

[2]*Mr. Shore's Minute of 18th June* 1789, sections 258—260. In judging of the merits of the Permanent Settlement, the effect of the measure (and of the prospect of a similar measure for a long time held out in the North-Western Provinces) towards correcting this undoubted mischief, ought fairly to be taken into consideration.

[3]Of 18th June 1789, as to Bengal: and 18th September 1789, as to Bahár.

[4]Orissa here spoken of included only the district of Midnapore and part of Hughli, or more accurately the tract of country between the rivers Suburnorekha and Rúpnarain—see *Bengal Administration Report,* 1872-1873, p. 40. Orissa proper was not acquired until 1803, see *ante,* p. 21.

be continued and remain unalterable for ever if the Court of Directors approved. This approbation was given by the Court in their Revenue General Letter of the 19th September 1792 :[1] and accordingly a proclamation was issued on the 22nd March 1793, declaring the assessment fixed for ever. The articles of this proclamation were enacted into Regulation I of 1793.

§ 81.—The demand of the State having thus been limited for ever, and the Government having voluntarily resigned[2] all claim to share in the increased produce or value of the produce

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[1]In this letter the following passage occurs:—"You will, in a particular manner, be cautious so to express yourselves as to leave no ambiguity as to our right to interfere from time to time, as may be necessary for the protection of the raiyats and subordinate landholders; it being our intention in the whole of this measure effectually to limit our own demands, but not to depart from our inherent right, as sovereigns, of being the guardians and protectors of every class of persons living under our Government." See *ante*, pp. 44, 45, *Note*.

[2]When the Income Tax was first imposed (1860); and again more recently, when it was proposed to levy an Educational Cess in Bengal, the zemindárs whose estates had been included in the Permanent Settlement of 1793, raised an objection that these taxes were an infringement of the Permanent Settlement and of the promises then made that the assessment would remain fixed for ever, and that *no demand would ever be made upon them or their heirs and successors by any future Government for an augmentation of the public assessment in consequence of the improvement of their respective estates.* The Government of India answer this by relying in some measure upon the seventh article of the Proclamation incorporated in Regulation I of 1793 ; but the Home Government took a wider and undoubtedly a reasonable view in maintaining that it was necessary to look for the answer altogether outside of the four corners of the document in which the Permanent Settlement is recorded. It was pointed out that the scope and object of that measure are clearly shown by the words above italicised and by the whole of the sixth article of the Proclamation, *viz.*, to put an end for ever to the practice of all former Governments of altering and raising the Land-tax "from time to time," so that the landholder was never sure, for any definite period, what proportion of the total produce of the soil might be exacted by the State. It was therefore decided that the Bengal zemindárs were liable to this taxation in common with other members of the community and other owners of property (see *Despatch No. 5 of 12th May 1870, published at page 841 of the Supplement to the Gazette of India of 25th June 1870*). Of the justice and propriety of this decision there cannot be a doubt. Assuming the terms of the Permanent Settlement to constitute a *contract*, as some like to call it, its scope must be limited by its subject-matter, and its language cannot be applied to things not within the intention to be gathered from the whole document. Those who still contend that this intention, as interpreted by the Home Government, was not the intention of the authors of the Permanent Settlement, would do well to read Lord Cornwallis's Minute of the 3rd February 1790, which shows very clearly that the possibility

of the soil resulting from causes unconnected with improvements effected by individual enterprise, the history of the administration of the Land Revenue in Bengal, Bahár and Orissa is from this time forward to be found in the Regulations and Acts which have been passed from time to time to enable the Revenue Authorities to compel the payment of the amount assessed on estates at the time of the Permanent Settlement[1]. I now proceed to trace the course of this peculiar legislation from the period of the Permanent Settlement down to the present time.

§ 82.—The first Regulation on the Statute Book, which prescribes the process for the realization of the public revenue in the provinces of Bengal, Bahár, and Orissa is Regulation XIV of 1793. There are two classes of defaulters contemplated by this Regulation, *viz.*, I.—Zemindárs, independent talúkdárs (see s. 5, Regulation VIII of 1793), and other actual proprietors of land; and II.—Farmers of land, holding farms immediately of Government. In respect of the former, the Regulation provides the following process:—

(1)—The issue and service of a written demand (dastak, s. 3). (2)—Arrest and confinement (s. 4)[2] if the third part of the instalment of any one month were not paid by the 15th of the following month. (3)—Simultaneous deputation of an Amín to collect the rents and revenues from the estate or farm of the defaulter (s. 6). This was a virtual attachment. (4)—Sale of the estate, or of a portion thereof, but only with

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and probable necessity of future general taxation were then present to his mind, and that it never occurred to him for a moment to think that the terms of the Permanent Settlement as drawn under his guidance, could be urged as a bar to such taxation. On the contrary, he distinctly contemplated future *general* taxation as a means of carrying into practice the maxim that all the subjects of the State ought to contribute to the public exigencies in proportion to their incomes—which maxim he considered violated by varying the assessment on the land, when an increase was found necessary, and so drawing this increase from one class only, while "the merchants and inhabitants of the cities and towns, the proprietors of rent-free lands, and in general all persons not employed in the cultivation of the lands paying revenue to Government" contributed little or nothing. See also Preamble to Reg. XXVII of 1793.

[1]The total amount levied under the Decennial Settlement in the Bengali year 1197 (1790-1791) was Sicca Rs. 2,68,00,898, *i.e.*, for Bengal, Bahár and Orissa.

[2]If the proprietor contested the fact of the alleged arrear, or any portion of it being due, tendered sufficient security, and undertook to institute a suit in the Civil Court within ten days to try the question, the Collector was bound to release him on security (ss. 9,10, and 11).

the sanction of the Governor-General (ss. 13 and 22).[1] (5)—If the whole amount due were not realized by the sale of the revenue-paying lands of the defaulter, then by attachment and sale of his other real and personal property (s. 44).[2]

§ 83.—All the above processes were equally applicable to farmers holding farms immediately of Government (ss. 3, 4, 6, 23, 24, and 44); and also to the sureties of such farmers. Arrears of *tuccavi*, or any money advanced by Government to proprietors or farmers for making or repairing embankments, reservoirs, or watercourses, or other improvements, were to be recovered by the same process as arrears of land revenue (s. 40).

§ 84.—The next Regulation on the subject is III of 1794, in the preamble to which it was declared that the Governor-General in Council considered property alone to be a sufficient security for the public dues. Accordingly, *proprietors of land* were declared no longer liable to be confined[3] for arrears of public revenue or demands recoverable as arrears of revenue, unless in the event of the whole of their lands having been sold without realizing sufficient to defray the amount due to Government. Interest at twelve per cent. per annum was now to be charged on arrears, after a notice had been served on the

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[1]The sale was to be ordinarily for arrears due at the end of the year though the Governor-General in Council might direct the sale before the close of the year. Lands directed to be sold were to be attached by an Amín, if such an officer had not been already deputed under section 6 (section 25).

[2]Which was attached and sold under the same rules as the revenue-paying lands.

[3]The following extract from the *Fifth Report of the Select Committee on the affairs of the East India Company* describes in graphic language the manner in which arrears were recovered before the introduction of British rule :—"Under the Native Governments the recovery of arrears from defaulters was sometimes attempted by seizure and confiscation of personal property, or by personal coercion. The *zemindár* might experience the mortification of having the administration of the *zemindári* taken out of his hands and entrusted to a sezawal. *He might be imprisoned, chastised with stripes, and made to suffer torture, with the view of forcing from him the discovery of concealed property. He was liable to expulsion from the zemindári. He might be compelled to choose either to become Mussulman or to suffer death.*" Mr. Shore says :—"Pits filled with ordure and all impurities were used as prisons for the zemindárs, and these were dignified with the appellation of Baikanth, the Hindu Paradise." Another account is that they were suspended by the heels, and the soles of their feet having been rubbed with a hard brick were then bastinadoed with a switch. In winter they were stripped naked and sprinkled with water, a very severe torture to inhabitants of a hot climate.

defaulter that he would be subjected to this penalty, failing payment (s. 4). The first step for the realization of arrears was the sale of the revenue-paying lands; and the Board were authorized to advertise them for sale in anticipation of the sanction of the Governor-General; but the sale was not to take place until the receipt of such sanction (s. 5). Sales were allowed without restriction, as well for arrears accruing within the year as for arrears remaining due at the close of it.

§ 85.—This Regulation made no change in the process applicable to farmers and their sureties provided by Regulation XIV of 1793. It extended the coercive process of the Revenue authorities to a new class of persons, *viz.*, native officers entrusted with the receipt or payment of public money, or the charge of public accounts. These persons were now required to provide sureties (s. 15). If a Collector had a claim against a native officer for money or papers belonging to Government, he was to make a written demand of the payment of the money or delivery of the papers. Failing compliance, he might apprehend the native officer and convey him to gaol, and might also attach his real or personal property, which the Board of Revenue were authorized to have sold under the rules applicable to the sale of land for arrears of revenue (s. 16).[1] If the native officer absconded, the Collector might proceed against his surety in the same way (s. 17). If a native officer, being required by notice posted in the Collector's Kachahrí and at the last place of residence of such officer, failed to attend to adjust his accounts, the Collector might prepare as accurate a statement as he was able, and might upon that proceed against this native officer and his surety, as if the account had been adjusted (s. 18).

§ 86.—The next Regulation was V of 1796, which provided for selling lands in lots, for not selling the remaining lots when the sale of one or more had satisfied the arrears due, and for paying over surplus sale-proceeds to the defaulter, who was entitled to them. Regulation XII of 1796 increased the deposit to be made on the purchase of lands at public sales from five to fifteen per cent.

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[1]If either the native officer or his surety being in confinement, wished to contest the justness of the claim, he might do so by instituting proceedings in the Civil Courts; and if he furnished sufficient security for fulfilling the final orders of the Court, he might be released from confinement (ss. 19 and 20).

§ 87.—It was now found that the revenue was not realized with the desired punctuality. Freed from the fear of confinement, and taking advantage of the delay with which the process for disposing of their lands was unavoidably attended—when the orders of the Board of Revenue and of the Governor-General had, in those days of imperfect means of communication, to be obtained before a sale could be made—many of the zemindárs withheld payment until the very day of sale; or, with a view to profit by the want of information in the public offices of the actual produce[1] of their estates, which was the result of the discontinuance of former checks and scrutinies instead of preventing they encouraged the public sale of portions of their lands, for the purpose of repurchasing the same in fictitious names at an underrated assessment, or of reducing the assessment upon the residue of their estates by overrating the proportion sold. It was at the same time thought that proprietors and farmers had not sufficient means of realizing their own dues from the under-tenants and raiyats, and that some of them were, for this reason, unable to meet the demands of Government. The frequent and successive sales of land which, in consequence, took place within the year,

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[1]Under the provisions of section 10, Regulation I of 1793, *the actual produce* was the basis of the apportionment of revenue. Referring to this provision, the Select Committee say :—"The exact adjustment of the revenue on lots of estates exposed to sale would have been by this rule extremely easy, had the *data* been procurable with sufficient exactness; but the actual produce of the whole, or of the part of an estate could now be known only to the zemindár and his own servants. The means which the former Governments possessed, and might have exercised for this purpose, were relinquished on the conclusion of the Perpetual Settlement. The Directors had already prohibited the practice of minute local scrutinies: the Kanúngo's office was now abolished: and the *Patwári* or village accountant declared to be no longer a public officer but the servant of the zemindár. Under these circumstances, the real produce of the whole, or any part of an estate, could be known only to the proprietor, whose interest it was to represent the produce on the part distrained for sale as great as possible, by which means he might procure a diminution in the rate of assessment on the part remaining." The Committee had already shown that, as the public faith was pledged not to increase the amount of revenue, the great proportion borne by the revenue to the produce rendered a correct adjustment on the portion of an estate sold indispensable, as if overrated, such portion would prove unequal in produce to defray its assessment. The consequence would be loss to the purchaser, and another sale as the result: and Government would ultimately be compelled either to assume possession itself, or render it worth purchasing by reducing the assessment.

were found productive of material ill-consequences, as well towards the land-proprietors and under-tenants, as in their effect on the public interest in the fixed assessment of the land revenue.[1]

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[1]Taken almost *verbatim* from sections 1 and 21 of Regulation VII of 1799. The Select Committee in their *Fifth Report* are not so much disposed to blame the zemindárs as to attribute these results to a change of system. They point out very forcibly that the new system had abolished, under severe penalties, the exercise of the powers, formerly allowed the landholders over their tenantry, and had referred all personal coercion, as well as the adjustment of disputed claims to the newly established Courts of Justice; that these Courts were utterly unable to cope with the work thus thrown upon them (in Bardwan there were more than *thirty thousand* cases before the Judge); that the determination of a single suit could not be expected in the course of the plaintiff's life; that the cultivators, taking advantage of the inability of the Courts to afford the zemindár's redress, withheld their rents, and in their turn made the zemindárs suffer; that the rules for the distraint of the crop or other property, founded on the practice in Europe, and intended to enable the zemindárs to realize their own rents, by which means alone they could perform their engagements with Government, were ill-understood, and not found to be of easy practice.* Then the proportion of the produce, fixed as the Government share, *viz.*, ten-elevenths of the rent paid by the tenantry, was in most cases a large proportion; and it required the most attentive and active management to enable a landholder to discharge his instalments with the exact punctuality required by the law. But landholders, as a rule, were not capable of such management, being in the habit of leaving their affairs to servants who were accustomed to seek for the means of extricating themselves from difficulties in intrigues with superior authorities, rather than in their own individual exertions. Under these circumstances, the Committee conceived it to have been shown that the great transfer of landed property by public sale, and the dispossession of the zemindárs, which took place within a few years after the conclusion of the Permanent Settlement, could not be altogether ascribed to the profligacy, extravagance, and mismanagement of the landholders, but had, to a certain extent, followed as the unavoidable consequences of defects in the public regulations combined with inequalities in the assessment, and with the difficulties, obstructions, and delays with which the many nice distinctions and complex provisions of the new Code of Regulation, were brought into operation among the illiterate persons who were required to observe them. Mr. Marshman correctly says :—"In the course of seven years, dating from 1793, most of the great zemindárs, who had survived the commotions of more than a century, were ejected from the estates of which they had been recently declared the sole proprietors. It was a great social revolution, affecting more than a third of the tenures of land, in a country the size of England."—*History of India, Vol. II*, page 261: and see *Mr. Holt Mackenzie's Minute*, § 329, *note*. The Rájá of Bardwan was the only one of the great zemindárs who escaped, and the invention of the *Pasnti* system is said to have saved him.

*Up to this time they have not become popular or commonly used.

§ 88.—In order to remedy these evils, Regulation VII of 1799 was passed. By the first twenty sections[1] of this Regulation, larger powers of *distraint*, and, in the case of arrears exceeding Rs. 500 due from under-tenants, of *arrest* were conferred upon landholders. In the *twenty-first* section, it was stated that these provisions would afford proprietors and farmers the means of realizing their rents with promptness and facility; and that the utmost punctuality would consequently be expected from them in the payment of their revenue to Government; and it was repeated that the Government were still desirous of enhancing the value of landed property, and of promoting, as far as possible, the ease[2] of the proprietors, by considering their property alone a sufficient security for the public dues, without subjecting them to any personal restraint, except in cases of necessity; and therefore for bore to renew the usage of confining proprietors whilst there could be a hope of realizing the fixed assessment on their lands according to the stipulated periods without resort to this measure. It was enacted then, that when any arrears remained undischarged on the first day of the month succeeding that for which it was due, the Collector was immediately to require payment with interest; and if it were not discharged, or assurance given to the Collector's satisfaction for its immediate payment, he was to *proceed without delay in the case of proprietors, to attach their estates*, or such portion thereof, as would be sufficient to make good the amount due; and *in the case of farmers, both to attach the farm and any other landed property of the farmer which could be attached* (cl. 6), *and to arrest the person of the farmer and his surety* (cl. 2, s. 23). In the case of a farmer who had given security, and who the Collector had reasons to believe was not about to abscond, the process for confinement was not to issue until after the service of a written demand.

§ 89.—It had become the practice to defeat attachments by collecting, or pretending to have collected, rents *in advance*

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[1]Which remained in force until repealed by Act X of 1859.

[2]Some of the zemindárs would have preferred a return to the old system; and from a Minute recorded by the President of the Board of Revenue in July 1799, it appears that some of the Members of the Board recommended, and strongly urged, a recurrence to the former practice of confining the landholders for enforcing the payment of arrears.

from the under-tenants and raiyats. This practice was forbidden, and it was declared that, in case of attachment, no credit would be allowed for rents paid before the stipulated or usual period of payment according to the *kistbándí* or other engagement, or established local usage. If an arrear remained due from a proprietor *at the close of the year*, the Collector was to report the amount to the Board, transmitting at the same time a statement of his lands for sale; and the Board were now, for the first time, authorized to sell *without any reference to the Governor-General in Council* except in special cases in which they might require instructions (s. 30). If the whole arrears were not recovered from the sale of the defaulter's lands, the deficiency was to be recoverable from any other property he might possess, or by imprisonment of his person (cl. 5, s. 23). Though sales were usually to be made after the close of the year, power was reserved to the Governor-General in Council of ordering a sale of land or other property within the year in any particular case in which he judged it proper. This, however, was now made the exception instead of the rule.

§ 90.—In the case of farmers, any land or property belonging to them or their sureties was to be brought to public sale as soon as possible after the close of the year, and their farming lease might be cancelled, or they might be compelled to perform its conditions until its expiry. In the case of lands or estates coming under the immediate management of the Revenue Authorities—and this included estates managed by the Court of Wards (s. 26)—Collectors were authorized, without any previous application to the Civil Court to proceed against under-renters of every denomination from whom arrears of rent were due, and against their sureties in the same manner as they were authorized by s. 23 to proceed against farmers and their sureties (s. 25). The village *Patwáris* were to furnish accounts in all cases of attachment; and defaulting proprietors and farmers were to produce or cause their agents to produce, such accounts as might be required, on pain of *fine*, and, in case of persistent recusancy, of *imprisonment*. In order to ensure accurate materials for assessing the Government revenue on portions of estates, proprietors and farmers were declared liable to fine, if it were proved that the accounts furnished by the *Patwáris* had been fabricated, altered, or changed by their orders, or with their knowledge or connivance. Purchases of land were to be made in the names of the persons actually purchasing without any fictitious substitution: and defaulting

landholders, farmers or their sureties were positively restricted from becoming the purchasers directly or indirectly, of their own lands, when disposed of at public sale (s. 29).

§ 91.—The above provision of Regulation VII of 1799 were found materially to promote the objects intended to be attained[1]; but, owing to the indiscriminate attachment of lands, and to the delays which still occurred in bringing portions of estates to sale for the recovery of arrear outstanding at the close of the years,[2] and which were mainly caused by the difficulty of apportioning the assessment, further legislation was found necessary: and Regulation I of 1801 was passed. Collectors were now directed not to attach estates or farms during the first three months of the year without the express sanction and order of the Board of Revenue ; nor was an attachment to be made subsequently without such sanction and order, unless the Collector judge it expedient with a view to induce payment of the arrear by the defaulter, or to prevent his misappropriation of the remaining rents of the year, or to obtain accurate information of the assets of the estate for the purpose of disposing of a portion of it by public sale at the close of the year. When for any of these purposes attachment was judged advisable, it might be made after the third month of the year; but *the whole estate was to be attached and not a portion merely.* Whenever the Board and the Collectors did not judge it expedient to attach for any of the above purposes, but were of opinion that the revenue was wilfully withheld, or that the arrear was ascribable to neglect, mismanagement, or misconduct, the Board was declared competent to impose a penalty of one per cent. per mensem on the arrear, in addition to interest. Collectors were to be particularly careful to inform themselves and to report to the Board as to the real cause of arrear, "whether want of good faith on the part of the defaulter, or actual inability from a failure in his rents or otherwise, so that the proper remedy might be applied to the ascertained circumstances of the case, and neither the public interest be injured by unmerited indulgence, nor those of the individual suffer from undue severity" (s. 2).

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[1]Preamble to Regulation I of 1801.

[2]The period of experiment was very brief, Regulation I of 1801 having been passed in one year and four and a half months after Regulation VII of 1799.

§ 92.—It had been found that proprietors and farmers withheld the accounts of their estates and farms when attached and that the penalties already provided were insufficient. The Government therefore declared, that when accounts were so withheld, an immediate sale of the lands and other property of the defaulter would be ordered *within the year*. It had also been found that when lands were ordered for sale the accounts were withheld, and the imposition of a fine was not sufficient to compel their production. The village *Putwáris* were moreover either withdrawn or no longer appointed; and it became, in consequence, almost impossible to adjust the allotment of the fixed assessment upon portions of estates. It was therefore declared that in future whenever a proprietor refused or wilfully neglected to furnish the accounts required of him, the whole of the estate, instead of a portion only, would be ordered for sale; and if, before the day fixed for sale, the accounts were delivered, it would be competent to the Governor-General in Council, if the sale were countermanded, to impose such fine as he might judge proper (ss. 3, 5)[1].

§ 93.—Instances had occurred in which, from the very small extent of certain estates, from their dispersed situation and inconsiderable produce, it had been found impossible to attach them without an expense altogether disproportionate to the arrear and to the value of the estates themselves; and, in consequence, the proprietors had withheld the amount due, though well able to discharge it. To provide for such cases, the Board were authorized to order the distress and sale of the personal property of the defaulters in the first instance. Collectors were not, however, to adopt this course, except after special report to, and express sanction by, the Board of Revenue.

§ 94.—The sale of portions of estates had proved prejudicial to the public interests by causing too much sub-division, and to the interests of proprietors in consequence of the lots being so inconsiderable as to prevent a competition for the purchase of them.[2] To obviate these results the Board were authorized,

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[1]As to the importance of accounts, and the mistake committed in abolishing the former system under which the officers of Government were enabled to possess an intimate knowledge of the sources of revenue, see *Mr. Shore's Minute of 18th June* 1789, §§ 247—252.

[2]In a previous note, it has been shown how the deceptions practised in order to overrate the portions sold and diminish the assessment on the remainder of the estate tended ultimately to the injury of Government, who were obliged to take *khas* possession of the portion sold

in the case of estates bearing a less annual assessment than Rs. 500 (sicca), to direct the sale of the whole estate, and to take the same course in the case of larger estates, when the portion necessary to be sold, in order to discharge the arrear, would be so large as to leave only an inconsiderable surplus on the sale of the entire estate (s. 6). The necessity of promptness in submitting to the Board statements of lands to be sold at the close of the year was impressed upon Collectors; and as, in consequence of the entire estate being sold, allotment of the assessment would now be necessary in fewer instances, it was presumed that sales would take place within the first or, at the latest, the second month after the expiration of the year. Leases granted by the late proprietor were allowed to run until the end of the year *within which the sale took place* (s. 9).

§ 95.—The sale of fractional portions of an estate held as joint undivided property, being considered likely to depreciate the value of the property sold from the uncertainty of the assessment and the responsibility attaching to the share of a joint undivided estate, was forbidden without the express sanction of the Governor-General in Council, to be given on a report of any particular case which might appear to require it. The united provisions of Regulations VII of 1799 and I of 1801 appear to have been successful in effecting a more punctual and satisfactory realization of the revenue, as no further legislation was now found necessary for several years.

§ 96.—In 1812 the law was repealed, which prohibited proprietors from granting leases for a period exceeding ten years; and they were declared competent to grant leases for any period which they might deem most convenient to themselves and their tenants, and most conducive to the improvement of their estates[1] (s. 2, Regulation V of 1812). The law requiring

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with its resources reduced below the scale of its assessment, or to render the proprietary right in it worth possessing to a new purchaser by diminishing its assessment of revenue. Such deceptions were, of course, unavailing in cases where the whole estate was exposed to sale in one lot; but, in the gradual dismemberment of some of the great *zemindárs*, they were for a time successfully practised by the confidential servants of the Rájás of Jessore, Nuddea, Bardwan, and other defaulters of rank, sometimes with a view to their own emolument, at others to that of their employers; but in all cases with an effect injurious to the revenue of the State.—*Fifth Report.*

[1]The removal of this restriction increased the value of landed property by rendering it much more readily available as a means of raising money. It also had an important result in making proprietors mere annuitants on their estates, the best part of the usufruct of which was

leases, &c., to be in a particular form to be approved by the Collector was also repealed (s. 3), and the contracting parties were allowed to select such form as they might deem most convenient and most conducive to their respective interests. This Regulation also contained further provisions as to cancelling the engagements and enhancing the rents of tenants on estates sold for arrears of revenue, and on the subject of distraint and attachment for arrears of rent.[1] Regulation XVIII of 1814 enacted that, when any portion of an instalment of revenue payable in any month remained due on the first of the following month, the Collector might have the defaulter served with a written notice of demand, or *without any such notice* might advertise his lands for sale *without the previous sanction* of the Board of Revenue, if such lands constituted an entire estate or the whole of the defaulter's rights and interests in a joint estate. He was then to report to the Board, and was not to proceed to actual sale until receipt of the Board's sanction.[2]. This sanction the Board were empowered to give without any previous reference to the Governor-General in Council, whether the arrears were due on account of the current year, or of any former year or years. The previous sanction of the Board was still declared necessary before

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granted away under perpetual leases. Seven years after, the Patni Regulation (VIII of 1819) was a legislative recognition of the first great step in that system of sub-holding which is now fast completing the analogy between the Bengali raiyat and the Irish cottier. The failure of the rice crop is as fatal to the former as that of the potato crop has proved to the latter. Another result, in a country where there is no law of entail, or law producing similar effects, is that proprietors, by receiving fines for the grant of irrevocable leases, alienate a portion of the future rental to the impoverishment of their posterity. This coupled with the division of estates which is the necessary result of the operation of the Hindu and Mahomadan laws of inheritance, is fatal to the continued existence of anything like a pure landed aristocracy. The landholders, who are landholders only, are poor : and the cultivators are poor ; and the increasing wealth of the country is to be found in the hands of a prosperous middle class, which has sprung into existence under our rule, and is, like the similar class in England, composed chiefly of successful advocates, merchants, bankers, traders, &c. Many of these purchase lands, but they are not purely landholders.

[1]As to Regulation V of 1812, &c., see *Kirt Chandra Rai and others* v. *The Government and others*, I Moo. Ind. Ap., 383.

[2]As to sanction after sale not being sufficient, and other important points of construction of the Sale Laws up to and including Regulation XVIII of 1814, see *Máhárájá Mitterjit Singh* v. *The heirs of the late Rani, widow of Rájá Jeswant Singh*, III Moo. Ind. Ap., 42.

advertising for sale any lot constituting a part only of the defaulter's property in an estate.

§ 97.—The next Regulation was XI of 1822. During the twenty-one years which had elapsed since the passing of Regulation I of 1801, a great change had taken place. The object of the legislation of 1799 and 1801 had been to secure the punctual realization of the revenue assessed at the time of the Permanent Settlement without resort to the old system of confining and occasionally inflicting corporal punishment upon defaulters. The terror of personal coercion being removed, various devices had been practised to elude payment of the just dues of Government; and, in many instances, these dues, the payment of which was exacted with a punctuality before unknown, had not been discharged, because those who were liable to Government for *revenue* were unable to compel similar punctuality in the payment of *rent* by their *tenants*. Armed, however, with powers for enforcing payment of their rent, scarce inferior to those exercised by Government for enforcing payment of its revenue, and taught by experience that persistence in fraudulent devices was sure to result in ultimate loss, the great majority were successfully schooled to punctuality, and cases of default became yearly of less occurrence. The prosperity resulting from more than a quarter of a century's peace largely raised the value of land and so contributed to the ultimate result.[1] In all countries, and not least in Bengal, the possession of land bestows a considerable respectability; and in a country where there were few other objects of speculation or investment, the surplus wealth which began to be slowly put together was eagerly laid out in the purchase of that which, in addition to other advantages, possessed that of immovability—a very desirable quality when the system of Police was defective, and the possession of valuable moveables was sure to tempt the cupidity of the numerous gangs of dakaits which infested the country, or

[1]At the time of the Permanent Settlement but two-thirds of the land were under culture. A population rapidly increasing in a country where there are no restraints on multiplication, soon brought the remaining one-third under cultivation in most districts, and the zemindars at once reaped the benefit in the shape of a considerable direct increase of rent. Another direct source of increase was to be found in the opening up of trade unfettered by internal duties (the sayer being abolished) and the ready market which surplus produce found in consequence.

even of the Police themselves.[1] Land thus became unusually valuable, and, where arrears had been suffered to accrue, owing to temporary apathy, or mismanagement, or negligence, or dishonesty of agents ; and, in consequence, an estate had been brought to sale by the inexorable Revenue Authorities, flaws in their proceedings were eagerly searched for, and the Civil Courts were resorted to for the purpose of setting aside sales, at, or in the procedure antecedent to, which irregularities had been discovered. The rights of auction-purchasers not being very exactly defined by the Regulations, formed moreover a constant source of litigation. Accordingly, we find the Legislature in 1822 no longer devising means for bringing home their liability for arrears to proprietors and farmers, but improving the procedure of the Revenue Authorities, declaring what irregularities should be held material and what immaterial, and defining the exact interest acquired by purchasers and public sales.

§ 98.—The preamble of Regulation XI of 1822 commences thus:—"The existing Regulations relative to the public sale of estates for the recovery of arrears of revenue appear to be defective, inasmuch as they do not specify the conditions which are to be held necessary to the validity of such sales, nor define with sufficient precision and accuracy the nature of the interest and title conveyed to the persons purchasing estates so sold. Various doubts have accordingly arisen on both these questions, which it appears necessary and proper to remove by a legislative enactment ; and it is also expedient further to regulate the course of proceeding to be hereafter followed in regard to sales of the above description, in order better to guard against error or irregularity in the conduct of them. With the view, too, of securing the zemindar from the risk of that injury and hardship which experience has shown

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[1] "The establishment of an efficient Police, though an object of the first importance, appears to have been a part of the new internal arrangements in which the endeavours of the Supreme Government have been the least successful."—*Fifth Report.* The Government had taken the Police Administration on themselves, relieving the landholders of this duty and resuming the lands which had been held by the *zemindári paiks.* The landholders were, in consequence, obliged to turn these men adrift, and they took to professional thieving, their operations being immensely facilitated by the great local knowledge which they had previously acquired. In the Bardwan zemindári, there had been no less than nineteen thousand of these *paiks.*

must in many individual cases result from the absolute confirmation of sales in all cases in which the prescribed conditions have been observed, it has appeared desirable to vest the Revenue Boards with the power of annulling sales made by the Collectors under their authority, not only in cases in which they may appear to have been irregularly conducted by those officers, but also in cases in which the defaulter may clearly appear to have been defrauded or deceived by his own agents, or in which the confirmation of the sale may from any cause appear to be a measure of excessive severity, or to be otherwise inexpedient or improper."

§ 99.—So much of the previously existing law was now repealed as prescribed that Revenue Officers should issue any process of demand upon persons from whom arrears of revenue or other demands similarly recoverable were due; or that they should attach the estates or farms in the possession or management of such defaulters before bringing their property to a public sale, as also any portions of the Regulations which restricted the powers of the Revenue Officers in selecting lands for sale, or in fixing the period of the sale (s. 2). It was declared and provided that—as the Regulations of Government had made the estates of proprietors primarily answerable by public sale for any arrear in the monthly payments of the revenue ; and as the property of all persons under stipulations with Government, whether as proprietors for their own estates or as farmers or managers, and their sureties, were likewise answerable for such arrears—the Collectors, with the sanction of the Board of Revenue, were entitled to have recourse to this process for the realization of any arrear or interest thereon or other revenue demand that might be due from parties so under engagements, *whether any other revenue process should or should not have been issued, and at any time of the year when the same might be unpaid*, subject only to such rules and restrictions as were specifically prescribed by the Regulations (cl. 1, s. 3).

§ 100.—Estates under the management of the Court of Wards were declared not liable to sale for arrears accruing during the period of such management.[1] Joint estates were not to be liable to sale for arrears that might accrue during the progress of a partition (batwara) until the expiration of the year

[1]See now section 17, Act XI of 1859. It may be a question whether a joint estate, one share in which is under the management of the Court of Wards, will be protected from sale by this section when arrears accrue

within which the arrear became due,[1] and estates under attachment by orders of a Court of Justice were not to be liable to sale in the middle of the year[2] for arrears which accrued during such attachment (cls. 2 and 3 of s. 3).

§ 101.—The conditions necessary to the validity of a sale were declared to be: I.—That the lands sold should form the estate, or part of the estate, on account of which the arrear had accrued; or be the property of the defaulter, or of his surety; or, not being the property of such, have been specially pledged to answer the demand in arrear. II.—That the Boards' permission for the sale had been received previous to the day of sale. III.—That due notice of the demand of the Collector's intention to sell, and of the time and place of sale, had been given. IV.—That some part of the amount demanded in the notice, or of the interest payable thereupon, should have been due at the time of the lot being put up for sale. V.—That the sale had been made at the time and place stated in the advertisement, and with due publicity and freedom.[3] If these conditions had been observed, and if the sale had been confirmed by the superior Revenue Authorities the sale could not be annulled, set aside, or altered by a Court of Justice ; but any person alleging himself to have been endamaged, might sue for damages the person by whose fault he considered himself endamaged (ss. 4, 5).

§ 102.—Rules were also laid down for the conduct of sales, the refusal, to accept bids, the course of procedure when defaulters or revenue officers purchased *benami*, the appropriation of the purchase-money, and other matters. No sale was to be deemed absolute or to entitle the purchaser to assume possession, until the confirmation of the Board had been received. The Board was vested with full authority to annul a sale on petition or otherwise.

§ 103.—When land other than that upon which the arrear had accrued was sold, the purchaser was to acquire merely

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upon the other share or shares not under such management. If it is so protected, it is not apparent how the arrears are to be recovered, for the Sale Law supposes a sale to have taken place before any other process is resorted to [see section 15, Act VII (B.C.) of 1868]. Probably the protection does not extend to such cases.

[1]This was repealed by section 1, Act XX of 1836.

[2]See now section 17, Act XI of 1859.

[3]The Revenue Authorities might postpone the sale, but due notice of postponement was to be given (s. 8).

the rights, interests, and title of the previous owner, just as if the land had been sold by private sale, or under a decree of Court, in liquidation of a private debt.[1] He did not, like a purchaser at a sale for arrears which had accrued on the *very land sold*, acquire a statutory title free from incumbrances (s. 29). From the rule which avoided all incumbrances in the event of such a sale were now exempted *khúdhásht kadimí* raiyats or resident and hereditarycultivators, who were not to be ejected by the auction-purchaser, though their rents might be enhanced after service of notice.[2]

§ 104.—Although the whole of Regulation XI of 1822 has been repealed by more recent legislation, many of its most essential provisions are to be found in the existing Sale Law. After the passing of the above Regulation, nearly twenty years more elapsed before any comprehensive measure engaged the attention of the Legislature. That instances of default, though few in comparison with the years immediately following the Permanent Settlement, had yet not ceased altogether, would appear from the passing of a short Regulation (XII) in 1824, which revived the penalty of twelve per cent. per annum on arrears in addition to interest, which penalty had been abolished by Regulation V of 1812. On the whole, however, it is tolerably clear that the system of realizing the revenue introduced by the British Government[3]

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[1]This is practically still law, as a purchaser at a sale in execution of a certificate under Act VII (B.C.) of 1868 (see *post*) is in the same position as a purchaser at a sale in execution of a decree of a Civil Court.

[2]See now section 37, Act XI of 1859, which protects a more extended class.

[3]"The sale of land by auction, or in any other way, for realizing arrears of land revenue, appears to have been unusual, if not unknown, in all parts of India before its introduction by the British Government into the Company's dominions;" and again—"Under the British Administration, down to the period of the introduction of the Permanent Settlement and the new Code of Regulations, it had not been usual to resort to the sale of land for the recovery of the arrears of revenue"—and in a Minute recorded in the proceedings of the Board of Revenue in July 1799, it is asserted that "from the Company's acquisition of the ceded lands (consisting of the 24-Parganas and the districts of Bardwan, Midnapore and Chittagong) comprehending, until the formation of the Permanent Settlement, a period of thirty years; and from the accession to the Díwání until the abovementioned time, there had hardly an instance been found of the property in landed estates having changed hands by cause of debts, either public or private; certainly of the large ones none."—*Fifth Report.* That sale of land for arrears of revenue was not *unknown* under the Mogul administration will, however, appear from *Appendix No. 14 to Mr. Shore's Minute of 2nd April* 1788. What

had by this time succeeded, if not fully as its original projectors had expected, at least sufficiently well to enable the revenue to be realized without loss.

§ 105.—The last of the Regulations concerned with the recovery of arrears of revenue was Regulation VII of 1830, authorized Collectors to advertise estates in balance for sale, and proceed to actual sale, without any previous reference for the sanction of the Commissioner, who had been appointed under the provisions of Regulation I of 1829, and to whom had been delegated some of the more immediate functions of the Board.[1] No sale was, however, to be final until it had been confirmed by the Commissioner. All estates in balance were *by an invariable rule* to be advertised for sale at the expiration of one month from the date of the arrear becoming due, and to be sold one month after the date of the advertisement. Penalty and interest were directed to be consolidated, and to be denominated "*consolidated penalty and interest*," and defaulters were to be subject to this demand at the rate of 25 per cent. per annum on the arrear of revenue due. Collectors were declared not competent to grant any remission thereof without the special sanction of the Commissioner or the Board.

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the natives thought of the new system at first may be gathered from the following passage in a letter from the Collector of Midnapore, dated 12th February 1802: "All the zemindars with whom I have ever had any communication, in this and in other districts, have but one sentiment respecting the rules at present in force of the collection for the public revenue. They all say that such a harsh and oppressive system was never before resorted to in this country; that the custom of imprisoning landholders for arrears of revenue was in comparison mild and indulgent to them; that though it was no doubt the intention of Government to confer an important benefit on them by abolishing this custom, it has been found by melancholy experience that the system of sales and attachments, which has been substituted for it, has, in the course of a very few years, reduced most of the great zemindárs in Bengal to distress and beggary, and produced a greater change in the landed property in Bengal than has perhaps ever happened in the same space of time in any age or country by the mere effect of internal regulations." —*Consuetudo omnium domina rerum.*—What would their descendants say now, if a return were made to the "mild and indulgent" system of former days?

[1]In the North-Western Provinces, the *previous sanction* of the Board is still necessary to a sale; and a sale is resorted to only when other processes are not sufficient for the recovery of the arrear.—See section 166, Act XIX of 1873. In the Lower Provinces, on the contrary, a sale is the first process.

§ 106.—The next important enactment was Act XII of 1841, under the provisions of which the levy[1] of interest and penalty upon arrears was discontinued. The Board of Revenue were authorized to fix *for the permanently settled districts* particular dates on which should be commenced the process for realizing by sale of mahals or estates the arrears of land revenue due thereupon. Due notification of such dates was to be made by publication in the Gazette and otherwise. The days so fixed were not to be changed, except by notification in the same way, made at least three months before the close of the official year preceding that in which the new dates were to have effect. Another notice was to be given for a period of not less than fifteen clear days previous to each fixed date of sale (s. 3).[2] In districts not *permanently settled*, no sale was to take place for arrears of land revenue or other demand of Government without the special sanction of the Board of Revenue obtained in each case (s. 4).[3]

§ 107.—An arrear of revenue was defined to be the whole or a portion of a *kist* or instalment of any month of the year, according to which the settlement and *kistbandi* of any mahal have been regulated, remaining unpaid on the first of the following month of such year (s. 5).[4] All estates, from which at *sunset of the day preceding that fixed for sale* an arrear remained due, were on such fixed day to be put up to public

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[1]Section 2, which enacted that there should be no demand of interest or penalty upon any arrear of land revenue *falling due after 1st January* 1842, is still in force in the Lower Provinces, the first six words and the words in italics merely having been repealed. It has been wholly repealed as to the North-Western Provinces, but re-enacted in section 148, Act XIX of 1873.

[2]These provisions were re-enacted with slight alterations and additions in Acts I of 1845 and XI of 1859 (the existing Sale Law). The dates to be now fixed by the Board are *the dates upon which all arrears of revenue and all demands, which by the Regulations and Acts in force are directed to be realized in the same manner as arrears of revenue, shall be paid up.* As soon as possible after such *latest day of payment* the Collector is to fix the *day of sale*, which must be not less than fifteen or more than thirty clear days from the date of affixing the sale notification in the Collector's office (see sections 3 and 6 of Act I of 1845, and sections 3 and 6 of Act XI of 1859).

[3]This was re-enacted by section 4, Act I of 1845 ; but the existing Sale Law (Act XI of 1859) makes no distinction between *distircts permanently settled*, and *districts not permanently settled*, latest dates of payment being fixed for both alike.

[4]Section 2, Act I of 1845, and section 2, Act XI of 1859, are the same *verbatim*, "era" being substituted for "year."

auction and sold to the highest bidder; and no payment or tender of payment, made subsequent to sunset of such day, was to bar the sale (s. 6).[1]

§ 108.—No sale was to be void or voidable by reason of any claim to abatement or remission not actually allowed by Government, or by reason of any private demand or cause of action against Government, or by reason of money belonging to the defaulter being in the Collector's hands, unless such money stood in the defaulter's name alone and without dispute, and the Collector, after application made in due time, neglected to transfer it to the credit of the estate (s. 7).[2]

§ 109.—In the case of: I.—Arrears due from, or to be recovered by the sale of, estates *not permanently settled*; II—Arrears *other than those of the current or of the preceding year*; III.—Arrears due on account of *estates other than those to be sold*; IV.—Arrears of estates[3] *under attachment by order of the judicial authorities*; V—Arrears due on account of *tuccavi*, *pulbandi* or other *demands*, not being land revenue, but *recoverable by the same process as arrears of land revenue*—no estate was to be sold otherwise than after the publication, for not less than *fifteen* clear days before the sale, of a notification specifying the nature and amount of the arrear or demand, and declaring that no payment or tender of such arrear or demand, made after sunset of the day preceding the fixed day of sale, should bar the sale (s. 8).[4]

§ 110.—Collectors were authorized, at any time before sunset of the day preceding that fixed for sale, to receive as a deposit from any part, *not being a proprietor of the estate in arrear*, the amount of such arrear, unless before that time the arrear had been liquidated by the proprietor. If the

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[1]Section 6 of Act I of 1845, and section 6 of Act XI of 1869 correspond, with this difference, that, under the provisions of these sections, payment can be made only up to *sunset of the latest day of payment.*

[2]Re-enacted *verbatim* in section 8, Act I of 1845, and section 8, Act XI of 1859.

[3]"Estates, under attachment" here includes *portions* of estates. An attachment under the Code of Civil Procedure is not superseded by the appointment of a manager.—*Banwari Lal Sahu* v. *Mahabir Persad Singh and others*, XII B.L.R., 297, and I. L. R., I. A., 89.

[4]Section 5, Act I of 1845, and section 5, Act XI of 1859, correspond; but with this difference, that the notification now specifies also the *latest day of payment*—the latter section does not contain the *first* of the above heads—and the *fourth* of them has been amended by the addition of the words "or managed by the Collector in accordance with such order"—(see Regulation V of 1827).

depositor were a plaintiff in a suit pending before a Court for the possession of the estate, or any part thereof, the District Judge was empowered to put him into temporary possession, subject to the rules for taking security from parties ; and if he proved before a competent Court that he deposit was made to protect an interest which would have been endangered or damaged by the sale of the estate, he was to be entitled to recover the deposit with interest from the the proprietor (s. 9).[1]

§ 111.—Estates not to be liable to sale for arrears which accrued while they were under the mangement of the Court of Wards ; estates, the sole property of minors and regularly descended to them by course of inheritance, duly notified to the Collector for the information of the Court of Wards, but of which such Court had not assumed the management, were not to be sold for arrears which had accrued after the succession of the minors, until they, or, in the case of more than one, some one of them had attained the full age of eighteen years. Estates, under attachment by the Revenue Authorities *otherwise* than by order of a Judicial Authority, were not to be sold for arrears accruing during the period of such attachment. Estates, held under attachment by a revenue officer by order of a Judicial Authority, were not to be sold for arrears accruing during the attachment, until the end of the year in which such arrears accrued (s. 10).[2]

§ 112.—The Collector was empowered to exempt an estate from sale at any time before the sale commenced. The Commissioner might do the same by a special order to the Collector, and a sale, after the receipt of such an order, was to be illegal. The reason for granting the exemption was to be recorded

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[1]Re-enacted *verbatim* in section 9, Act I of 1845. Section 9, Act XI of 1859, is the same, with the following alteration and additions :—*The Court in which the suit is pending*, instead of the District Judge, may put the depositor in possession. The deposit is to be recovered with *or without interest*. The following words are added to the section :—"And if the party so depositing, whose money shall have been credited as aforesaid, shall prove before such Court that the deposit was necessary, in order to protest any lien he had on the estate, or share, or part thereof, the amount so credited shall be added to the amount of the original lien."

[2]Re-enacted *verbatim* in section 10 of Act I of 1845, and in section 17 of Act XI of 1859.

(s. 11).[1] Sales were ordinarily to be made by the Collector or other officer duly authorized by Government and in the Land Revenue Kachahri at the Sádr station of the district. The Board might, however, prescribe any other place which they considered beneficial to the parties (s. 12)[2].

§ 113.—When the Collector or other officer was from sickness, the occurrence of a holiday, or other cause unable to commence or complete the sale on the day fixed, he was to adjourn it to the next open day, recording his reasons for adjourning, and sending a copy thereof to the Commissioner. When a second or further adjournment was necessary, the same course was to be followed (s. 13).[3] Estates were to be sold in regular order ; that bearing the lowest number on the *taujih* or Collector's register to be first put up, and then proceeding up in regular sequence (s. 14).[4]

§ 114.—Persons declared purchasers were to deposit immediately either in cash, Bank of Bengal notes, post-bills, or Government Securities, *twenty-five* per cent. of the amount bid ; and in default of such deposit, the estate was to be forthwith put up again and sold (s. 15.)[5] The balance of the purchase-money was to be paid before sunset of the *thirtieth* day, counting inclusive of the date of sale, and, if the thirtieth were a holiday, then on the first open office day after. In default, and as often as default occurred, the deposit was to be forfeited and the state re-sold after a fresh notification ; and in the event of the amount subsequently bid being less than the price bid by the defaulter, the difference was to be realizable from him *by any process authorised for realizing an arrear of land revenue* (s. 16).[6] When an

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[1]Re-enacted *verbatim* in section 11 of Act I of 1845, and in section 18 of Act XI of 1859.

[2]Re-enacted *verbatim* in section 12 of Act I of 1845, and in section 19 of Act XI of 1859.

[3]Re-enacted *verbatim* in section 13 of Act I of 1845, and in section 20 of Act XI of 1859.

[4]Re-enacted *verbatim* in section 14 of Act I of 1845, and in section 21 of Act XI of 1859, with the addition of the words "Except where it may be necessary to do so on default of deposit, as provided in section 22 of this Act."

[5]Re-enacted *verbatim* in section 15 of Act I of 1845, and in section 22 of Act XI of 1859.

[6]Re-enacted with slight alterations by section 16 of Act I of 1845, and by section 23 of Act XI of 1859, which latter enacts that such difference is to be regarded as part of the purchase-money and dealt with accordingly. Section 16 of Act I of 1845 further enacted that the

estate had been sold, the Collector or other officer was to issue a proclamation to the raiyats and under-tenants forbidding them to pay rent falling due subsequent to the date of sale (s. 17)[1]. As soon as the sale became final and conclusive, he was to give the purchaser a certificate of title, which was to be deemed sufficient evidence of title in any Court of Justice; and the transfer was then again to be notified by a further proclamation (s. 21).[2]

§ 115.—An appeal against the sale was allowed to be presented to the Commissioner before the *fifteenth*[3] day from the sale, or to be delivered to the Collector for transmission to the Commissioner before the *tenth* day.[4] The Commissioner was declared competent to annul any sale which appeared to him *not to have been conducted according to the provisions of the Act*, and where the sale was occasioned by the neglect of the proprietor, he might award a moderate compensation payable by him to the purchaser (s. 18).[5] Where, although the provisions of the Act had been complied with, there appeared to the Commissioner to be *hardships or injustice*, he might suspend the passing of final orders and represent the case to the Board, who, if they saw cause, might recommend to Government to annul the sale and restore the estate to the proprietor on such conditions as appeared equitable and proper (s. 19)[6] The amnulment of a sale was to be notified in the same manner as its becoming final and conclusive;

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notification of re-sale was not to issue until the expiry of three clear days after the day of default; and payment or tender of the original arrear, together with any revenue which might have subsequently fallen due, by or on behalf of the proprietor before sunset of the day preceding the day notified for re-sale was to bar such re-sale. This has been re-enacted in section 24 of Act XI of 1859.

[1]Under the existing law this is done *as soon as the estate or share of an estate is notified for sale* (section 7 of Act I of 1845, and section 7 of Act XI of 1859); and they are forbidden to pay rent to the defaulter *from the day after the latest day of payment.*

[2]Re-enacted in part of section 20 of Act I of 1845, and in section 28 of Act XI of 1859.

[3]Enlarged to 60 days by section 2 of Act VII (B. C.) of 1868.

[4]Enlarged to 45 days by section 2 of Act VII (B.C.) of 1868.

[5]Re-enacted in section 17 of Act I of 1845, and in section 25 of Act XI of 1859, and now embodied in section 2 of Act VII (B.C.) of 1868.

[6]Re-enacted *verbatim* in section 18 of Act I of 1845 and in section 26 of Act XI of 1859.

and the purchase-money was to be returned to the purchaser with interest at the highest rate of public securities (s. 23).[1]

§ 116.—No sale was to be set aside by a Court of Justice, except upon the ground of its having been made *contrary to the provisions of the Act*; and except the contravention thereto had been declared and specified in an appeal to the Commissioner, and except the action in the Civil Court had been instituted within one year from the date of the sale becoming final, no person who had received any portion of the purchase-money was allowed to contest the legality of a sale (s. 25).[2] When a sale was reversed by a Court of Justice, the purchase-money was to be refunded with interest at the highest rate of public securities (s. 26).[3] Any suit brought to oust the certified purchaser, on the ground that the purchase was made on behalf of another person, though by agreement the name of the certified purchaser was used, was to be dismissed with costs (s. 22).[4]

§ 117.—When the purchase-money had been paid up, and no appeal preferred, the sale became final and conclusive at noon of the *thirtieth* day from the date of sale, counting inclusive. When an appeal had been preferred, but dismissed, the sale became final from the date of such dismissal, if more than thirty days from the date of sale; if less, than on the *thirtieth* day (s. 20).[5] The purchase-money was to be applied, *first* to the liquidation of all arrears due from the estate upon the latest day

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[1]Re-enacted *verbatim* in section 22 of Act I of 1845, and with a slight addition in section 32 of Act XI of 1859.

[2]Re-enacted *verbatim* in section 24 of Act I of 1845, and also in section 33 of Act XI of 1859, with the addition of the words "and then only on proof that the plaintiff has sustained substantial injury by reason of the irregularity complained of" after "contrary to the provisions oft his Act." See *Maharaja Mahashur Singh Bahadur* v. *Babu Hurruck Narain Singh and others*, IX Moo Ind. Ap., 268. The personal action for damages still remains. If there is not arrear there is no jurisdiction in the Collector to sell, and a civil suit will lie for the reversal of the sale.—*Baijnath Sahu and others* v. *Lala Sithal Persad and others*, II B. L. R., F. B. I.; *Mangina Khatun and others* v. *The Collector of Jessore*, III B. L. R. App. 145.

[3]Re-enacted *verbatim* in section 25 of Act I of 1845 and in section 35 of Act XI of 1859.

[4]Re-enacted *verbatim* in section 21 of Act I of 1845 and in section 36 of Act XI of 1859.

[5]Re-enacted *verbatim* in section 19 of Act I of 1845 and in section 27 of Act XI of 1859; but the time has now been extended to *sixty* days by section 4 of Act VII (B. C.) of 1868.

of payment; *secondly*, to the liquidation of all outstanding demands debited to the estate in the public accounts of the district. Any balance that remained was to be paid to the late proprietors—according to their shares if recorded: on their joint receipt, if not recorded. It was not to be available to private creditors save in execution of a decree of Court (part of s. 21).[1]

§ 118.—The certified purchaser was to be liable for all instalments of Government revenue which fell due *after the day of sale* (s. 24).[2] Purchasers of *estates sold for the recovery of arrears due on account of the same in the permanently settled districts* were to acquire such estates free from all incumbrances which might have been imposed on them after the time of settlement, and were declared entitled, after notice duly given, to enhance the rents of all under-tenures, and to eject all under-tenants with the following exceptions :—

I.—*Istimrari* or *mukarrari* tenures held at a fixed rent *more than twelve years before the Permanent Settlement.*[3]

II.—Tenures existing at the time of the Decennial Settlement but not proved to be liable to increase of assessment on the grounds stated in section 51, Regulation VIII of 1793[4][*i.e.* (1) special custom; (2) conditions of tenures; (3) previous abatement.]

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[1]Re-enacted in part of section 20 of Act I of 1845 and in section 31 of Act XI of 1859.

[2]Re-enacted in section 23 of Act I of 1845 and in section 30 of Act XI of 1859, substituting "*after the latest day of payment.*"

[3]The same class exactly was protected by clause 1 of section 26 of Act I of 1845; but clause 1 of section 37 of the present law (Act XI of 1859) substitutes "from the time of the Permanent Settlement" for the words above in italics.

[4]Clause 2 of section 26 of Act I of 1845 is *verbatim* the same, but clause 2 of section 37 of Act XI of 1859 is as follows :—" Tenures existing at the time of settlement, which have not been held at a fixed rent, provided always that the rents of such tenures shall be liable to enhancement under any law for the time being in force for the enhancement of the rent of such tenures." Under the clause of Act XII of 1841 and I of 1845, the tenures, if shown to be in existence at the time of the Decennial Settlement, were protected from enhancement unless the action-purchaser could prove their liability thereto; under the clause in Act XI of 1859, the tenant is protected from ejectment but is liable to enhancement unless he can prove that he held at a fixed rent from the time of the Permanent Settlement. The burden of proof in this latter case is, however, considerably lightened by the 20 years' presumption of sections 4 and 16 of Act X of 1859, corresponding to sections 4 and 17 of Act VIII (B. C.) of 1869.

III.—Lands held by *khúdkásht* or *kadimi* raiyats having rights of occupancy at fixed rents, or at rents assessable according to fixed rules under the Regulation in force.[1]

IV.—Lands held under *boná fide* leases at fair rents, temporary or perpetual, for the erection of dwelling-houses or manufactories, or for mines, gardens, tanks, canals, places of worship, burying grounds, clearing of jungle, or the like beneficial purposes, such lands continuing to be used for such purposes.[2]

V.—Farms granted in good faith at fair rents and for specified areas, for terms not exceeding twenty years, under written leases, registered within a month from their date, and of the particulars of which written notice had been given to the Collector (s. 27).[3]

§ 119.—The purchasers of estates in *districts not permanently settled* acquired the estates free from all incumbrances imposed after settlement, and were declared competent to avoid and annul all tenures which originated with the defaulter or his predecessors, as well as all agreements with

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[1]Clause 3 of section 26 of Act I of 1845 is *verbatim* the same; but this class finds no place in section 37 of Act XI of 1859, which, however, protects from ejectment, though not from enhancement, raiyats having a right of occupancy at fixed rents or rents assessable according to fixed rules under the laws in force—(See proviso).

[2]Clause 4 of section 26 of Act I of 1845 is *verbatim* the same. Clause 4 of section 37 of Act XI of 1859 differs slightly. It speaks of *leases* of lands whereon dwelling-houses, &c., *have been* erected, or whereon gardens, &c., *have been* made, or wherein mines *have been* sunk, and says nothing about the lands *continuing* to be used for these purposes. The rent can, moreover, be enhanced if the purchaser can show that it was originally an unfair rent, or that the lands have not been held at a fixed rent equal to the rent of good arable land for a term exceeding twelve years, but not otherwise.

[3]The exception did not extend to leases objected to by the Collector with the sanction of the Commissioner within three months after notice. A purchaser might, moreover, sue to set them aisde on the ground of their not having been granted in good faith at fair rents. The same clause is repeated *verbatim* in section 26 of Act I of 1845, but is not found in section 37 of Act XI of 1859. The third clause of this latter section, however, somewhat supplies its place, *viz.*, "*talukdari* and other similar tenures created since the time of settlement, and held immediately of the proprietors of estates: and farms for terms of years so held, when such tenures and farms have been *duly registered under the provisions of this Act.*" This registration and the protection sought to be afforded thereby to under-tenures were the effectuation of one of the objects of the framers of Act XI of 1859.

raiyats or the like, settled subsequent to the last settlement as well as all tenures which the first engagor was, under the conditions of his settlement, competent to set aside, alter, or renew—*with the following exceptions, viz., boná fide* leases of ground for the erection of dwelling-houses, or buildings, or for offices belonging thereto, or for gardens, tanks, canals, water-courses, or the like purposes, which were protected so long as the land was duly appropriated to these purposes. Purchasers were not, however, entitled to demand higher rents from persons whose tenures or agreements were thus annulled, unless the lands had been held at lower rates of rents than were justly demandable either through favour, or for a consideration, or the like ; or unless it were shown that, according to the custom of the *pargána, mauzah,* or other local division, such persons were liable to be called upon for any new assessment or other demand not interdicted by the Regulations of Government (s. 28).[1]

§ 120.—The Local Government were authorized to direct any sale to be made subject to the leases, assignments, or other incumbrances with which the proprietor or his predecessors had burthened the estate, or to such of them as appeared proper. Notice of this condition was to be given at the time of sale. If, however, the amount realized by such sale were insufficient to satisfy the arrear, or if there appeared reason to believe that the future realization of the Government revenue would be endangered by this restriction, the sale might be cancelled, and a new sale ordered without restrictions (s. 29).[2]

§ 121.—Purchasers of estates *sold for arrears or demands, other than those accruing on such very estates,* acquired them subject to all incumbrances existing at the time of sale: and did not acquire any rights in respect to raiyats and under-tenants which were not possessed by the previous proprietor at the time of sale. The same rule applied to proprietors or co-partners, recorded or unrecorded,[3] who purchased in their own name, or in the name of some other person, or after the sale by re-purchase or otherwise

[1]Re-enacted *verbatim* in section 27 of Act I of 1845, and again in section 52 of Act XI of 1859.

[2]Re-enacted *verbatim* in section 28 of Act I of 1845, but omitted from Act XI of 1859.

[3]*i. e.*, in the Collector's register—See section 21 of Regulation VIII 1800.

recovered possession of the estate.[1] From this rule, however, were excepted co-partners of estates under *batwara* (partition, who had saved their shares from sale under sections 33 and 34 of Regulation XIX of 1814 by payment of their proportionate share of the balance due (s. 30).[2] Arrears of rent due to the defaulter from the tenants at the date of sale were to be recoverable by him after sale by any process which might have been used by him before the sale, except distraint (s. 31.)[3]

§ 122.—Such were the provisions of Act XII of 1841, passed on the 19th July of that year, during the Governor-Generalship of Lord Auckland, and a few months before the outbreak at Kabul, the murder of Sir Alexander Burns, and the commencement of the last scene in the memorable Afghan expedition. These provisions were re-enacted with slight modifications[4] four and a half years afterwards in Act I of

[1]These provisions were rendered necessary in consequence of proprietors intentionally allowing estates to fall into arrear, so that they might be sold and freed from incumbrances. The former proprietor then purchased (*benami*) through some of his creatures and a gross fraud was perpetrated upon persons who had paid the proprietor or his predecessor heavy fines for their leases.

[2]Re-enacted *verbatim* in section 29 of Act I of 1845 and in section 53 of Act XI of 1859, which latter section contains a further exception, *viz.*, " sharers with whom the Collector, under sections 33 and 34 of the Act, has opened separate accounts."

[3]Re-enacted *verbatim* in section 30 of Act I of 1845 and in section 55 of Act XI of 1859, which has " latest day of payment " " for date of sale."

[4]These modifications have all been pointed out in the preceding notes. It may, however, be useful to note here that two of them only were important. *First*, under Act XII of 1841 the estate was sold on the day following that fixed for payment. The objection to this was that there was no due notification of the actual sale, that persons likely to purchase had no reasonable opportunity of coming forward, and that estates were therefore sold for less than they would otherwise have fetched, which was unfair to defaulters. Then Collectors had orders to buy for Government when the biddings did not go up to the balance due, and so it was said that Government enjoyed an unfair advantage. Section 6 of Act I of 1845 remedied this by providing for a notification or sale after the last day of payment. *Secondly*, when there is a re-sale, owing to default in payment of the purchase-money, section 16 of Act I of 1845 gave the defaulting proprietor an opportunity, which he had not before, of paying up all arrears before sunset of the day preceding the day fixed for re-sale, and so saving the estate. A proprietor might therefore gain time and save his estate by paying a penalty of 25 per cent., for he could get someone to bid at the sale and make the usual deposit which, when it was forfeited, there would be a fresh notification for re-sale, and he could pay up before the re-sale took place.

1845,[1] and are still to be found in almost their original form in Act XI of 1859, the existing Sale Law for the Lower Provinces of Bengal. Thus the legislation of 1841, *forty-eight years after the Permanent Settlement*, at length settled the general principles by which sales of land for recovery of arrears of revenue were to be regulated. When eighteen years afterwards, in 1859, fresh legislation was considered advisable in connection with this subject, the occasion for such legislation arose, not so much from any necessity of altering what had been done in 1841, or remedying defects which time had brought to light in the working of the law as then settled, as from the expediency of affording protection to new interests which had sprung into existence during a further period of progress and prosperity. Before passing, however, to the provisions of this Act, I may notice one or two intermediate enactments which have a certain connection with the present subject.

§ 123.—Act XVI of 1842 enacted, in modification of Sections 2 and 3 of Regulation XVI of 1812, that proprietors might grant leases, or fix the rents of land tenures for any period not exceeding the terms of their own respective engagements with Government, provided that if a lease were granted, or the rent fixed for a longer period, the lease or management should be null and void only for the excess.[2] The Regulation, and therefore the Act, applied to no part of the Lower Provinces, except the district of Cuttack and the parganas formerly dependent upon that district, but since annexed to Midnapore, for which tracts a permanent settlement had not been concluded. Act IV of 1846 for the first time authorized the Civil Courts in the Lower Provinces of Bengal to attach and sell lands in execution of their decrees without any application or reference to the Revenue Authorities; and it declared that sales in execution of decrees were to be of the nature of private transfers, *i. e.*, purchasers acquired the incumbrances as well as the rights of former owners.

§ 124.—Act XX of 1848 softened the rigour of the law as to *daily fines* upon proprietors or farmers omitting or refusing to attend, or cause their agents to attend or furnish

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[1]Lord Hardinge was Governor-General when Act I of 1845 was passed just before the first Sikh War.

[2]This Act was repealed by Act VIII of 1868.

accounts or other documents. No daily fine was to exceed *fifty rupees*. Collectors were now for the first time empowered to impose such fines. The imposition and levy was, however, to be reported by the Collector to the Commissioner, and by the latter to Government. The orders imposing them were made appealable, and not more than Rs. 500 were to be levied without the special authority of the Commissioner.

§ 125.—Act XII of 1850 enacted that all public accounts should give security for the due discharge of their trusts and for the due account of all monies coming into their possession. Persons entrusted, by reason of their office, with the receipt, custody, or control of any monies, or securities for monies or with the management of lands, were declared to be *public accountants*; and the head of the office in which they were employed was authorized to proceed against them and their sureties for any loss or defalcation in their accounts, as *if the amount thereof were an arrear of land-revenue due to Government*. It was also enacted that all Regulations and Acts then or thereafter to be in force for the recovery of arrears of land-revenue and for recovery of damages by any person wrongfully proceeded against for any such arrear, were to apply, *mutatis mutandis*, to proceedings against and by public accountants.

§ 126.—The purposes for which Act XI of 1859 was passed may be gathered from the preamble, and are as follows:—

I.—To afford security to persons who have liens upon estates, and who pay the money necessary to protect such estates from sale.

II.—To afford sharers in estates, who duly pay their proportion of the revenue, easy means of protecting their shares from sale by reason of the default of their co-sharers.

III.—To afford landholders, particularly absentees,[1] facilities in guarding against the accidental sale of their estates by reason of the neglect or fraud of their agents.

IV.—To provide for the voluntary registration of dependent *talúks* existing at the time of settlement.

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[1]This is a direct encouragement to absenteeism. Irish landlords did not receive similar encouragement from the Legislature.

V.—To protect the holders of registered under-tenures created since the settlement and not resumable, from loss by the avoidance of their tenures by the sale of the estate ; and to give absolute security to such tenures by special registry, when shown to be held at a rent sufficient for the security of the revenue.

The provisions of the former law as to sales were amalgamated with the new provisions made for the effectuation of these objects ; and the consolidated measure became Act XI of 1859.[1]

§ 127.—When an estate had been mortgaged or otherwise hypothecated for the re-payment of money, if it were suffered to fall into arrear and so to be sold, throughe ither the carelessness or fraud of the proprietor, the creditor lost his security, as the sale cleared away all incumbrances. He might, indeed, bring a suit to enforce his lien against any balance of purchase-money which remained in the Collector's hands ; but as this could not be rendered available until he had got a decree, the defaulting proprietor was generally able to withdraw it before it could be attached in execution of the lien.[2] So long as this risk was possible, it was natural that revenue-paying estates had a depreciated value in the market as security for the repayment of money, and individual cases of hardship pointed to the advisability of amending the law. The necessary remedy was afforded by allowing the creditor to deposit the arrear of revenue and so save the estate from sale. If he afterwards proved before a competent Court that this deposit was necessary in order to protect any lien he had on the estate, added to or share, or part thereof, *the amount so deposited was to be added to the amount of the original lien.*[3]

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[1]As regards Sylhet, a change was made, the Collector being authorized, with the sanction of the Board, to proceed in the first instance by distress and sale of the *personal property of defaulters*, instead of by sale of their estates (s. 4). The estates in Sylhet are very small, and this was merely a re-enactment for that district of section 4, Regulation I of 1801.

[2]The provisions of Act VIII of 1859 as to attachment before judgment may now be put in operation to prevent this money being taken away ; but Act VIII of 1859 was not in force before the passing of Act XI of 1859.

[3]This was an amendment of section 9 of Act XII of 1841 = section 9 of Act I of 1845.

§ 128.—The system of joint-ownership, which is the normal state of every Hindu family, and which exists not infrequently amongst Mahomadans, is occasionally productive of inconvenient results, provident and thrifty sharers being made to suffer the consequences of the improvidence and extravagance of their co-sharers. Thus, where one of several co-sharers in an estate failed to pay his quota of the revenue, and so brought the estate into arrear, the other co-sharers had no alternative but to pay his quota out of their own pockets, if they would avoid the loss of their own shares, which would be the result of a sale. To obviate this hardship, a recorded sharer of a joint estate, *held in common tenancy, or whose share consists of a specific portion of the land*, may now apply to the Collector to be allowed to pay his share of the Government revenue separately. If after publication of notice no other recorded sharer makes any objection within six weeks, the Collector is to open a separate account with the applicant, and to credit separately to his share all payments made by him (ss. 10, 11). If any *recorded*[1] proprietor object that the applicant has no right to the share claimed by him, or that his interests is less than stated, or, where the share consists of a specific portion of land, that the amount of revenue thereupon is incorrectly given, the Collector is to suspend proceedings, and refer the parties to the Civil Court for a judicial determination of the point in dispute (s. 12).

§ 129.—In the event of a sale where a separate account has been opened for one or more shares, that share or those shares, from which the arrear is due, are alone to be put up in the first instance, notice being given in the sale advertisement of the intention of excluding the share or shares from which no arrear is due, and such share or shares are to continue to constitute one integral estate, the share or shares sold being charged with their separate portion of the revenue (s. 13). If the highest bid, made for the share or shares put up in the first instance, be insufficient to meet the arrear, the Collector is to stop the sale and to declare that the whole estate will be put at a future day, unless the other recorded sharer or sharers, or some of them, shall *within ten days purchase the*

[1]An *unrecorded* proprietor will not be acknowledged or listened to by the Collector at all, and his only resource is to go to the Civil Court at once—See *Hargobind Das and others* v. *Baroda Persad Das*, VI B. L. R., 615.

*share in arrear by paying the whole arrear due from such share.* If such purchase be completed, the purchaser is to get the usual certificate and to have the same rights as if he had purchased at a sale.[1] If the purchase be not completed, the entire estate is to be sold after the usual notification (s.14). Outsiders, who purchase shares under these provisions (*i.e.*, in ss. 13 and 14) acquire them subject to all incumbrances, and do not acquire any rights which were not possessed by the previous owners (s. 54).

§ 130.—In order to afford landholders, particularly absentees, facilities in guarding against the accidental sale of their estates for arrears of revenue by reason of the neglect or fraud of their agents, recorded proprietors or co-partners of estates are empowered to deposit with the Collector money or Government securities endorsed and made payable to the order of the Collector, at the same time signing an agreement pledging the same to Government by way of security for the revenue of the entire estate, and authorizing the Collector to apply them to the payment of any revenue that may become due therefrom. In case of arrear, the Collector is to apply to its payment the money and any interest due upon the securities; and, if a balance then remain, he is to sell the securities and apply the proceeds to its discharge. So long as funds are thus in hand to cover any arrear that may accrue, the estate is exempt from sale. Monies and securities so deposited are exempt from attachment otherwise than in execution of a decree of the Civil Court (s. 15). Persons so depositing and pledging monies or securities, or their representatives or assignees, may at any time withdraw them and revoke the pledge (s. 16).

§ 131.—The fourth and fifth objects may be considered together. The law provides for two sets of registers, one for *common registry*, the other for *especial registry*. *Common registry* secures the tenures and farms entered therein against any auction-purchaser at a sale for arrears of revenue *except Government*. *Special registry* secures against Government also (s. 39).

§ 132.—Tenures of the first and second exceptional classes in section 37, *i.e.* (1) *istimrari* and *mukarrari* tenures held at a fixed rent from the time of the Permanent Settlement, and (2) tenures existing at the time of the Permanent Settlement

[1]He is excluded from the operation of section 53—See note, *ante*.

though not held at a fixed rent—can be entered in the special register only. Applications for registration are to contain full particulars as to the nature, extent, creation, ownership, etc., of the tenure. A notice is then served on the recorded proprietor of the estate in which the tenure is situate, and other notifications are published, requiring the proprietor or any party interested, who may have objections to file them within *thirty days*. If no objection is made, the Collector is to make such inquiries as may be necessary to satisfy him as to the validity of the tenure. If satisfied, he is to report the case to the Commissioner, who, if also satisfied, may direct the tenure to be entered in the special register. If any person appear and object, the Collector is to examine him, and if it appear that he has probable ground of objection, the parties are to be referred to the Civil Court, otherwise he is to proceed as if no objection was made. If the Court decide in favour of the applicant the Collector, on presentation of a copy of the final decree, is to proceed as if there had been no objection. Registration of these tenures is wholly voluntary, and the law distinctly provides that registration is not *necessary* for their protection (s. 44).

§ 133.—The registration of *taluks* or similar tenures created *since the time of the Permanent Settlement*, and held immediately of the proprietors of estates, of farms for terms of years so held[1] and of leases of lands whereon dwelling-houses, manufactories, or other permanent buildings have been erected, or whereon gardens, plantations, tanks, wells, canals, places of worship, or burning or burying grounds have been made, or wherein mines have been sunk, may be either *common* or *special*. Persons desiring to register must apply to the Collector in the manner above stated, and similar notices to proprietors and others will be issued. If the application be for *common registry*, and no objection be made within the time allowed, the Collector is to register the tenure, farm, or lease. If an objection be made, and, on examination of the objector, appear reasonable, the Collector is to suspend proceedings and refer the parties to the Civil Court, and govern himself by the result. If the application be for special registry, the procedure is the same, with this important

[1]These *taluks* and farms form the third exceptional class in section 37. They are protected, once the inquiry has begun, pending its duration and eventually by registration if the result of such inquiry be favourable (s. 51).

addition that, as special registry protects against Government, the Collector must make an inquiry and satisfy himself that the Government revenue of the parent estate is sufficiently secured, so far as it may be affected by the tenure, farm, or lease in question. If so satisfied, he is to report the case to the Commissioner, who, if also satisfied, may direct entry in the special register (ss. 38, 40, 41, 42, 43).

§ 134.—Application for registry of tenures and farms existing at the time of the passing of the Act was to be made within three years from that date, *viz.*, 4th March 1859. This time was subsequently extended by Act III (B.C.) of 1862 to three years after the passing of this latter Act, *i.e.*, up to the 21st April 1865. Application for registry of tenures subsequently created was directed to be made *within three months* from the date of the deed constituting the tenure, and this is still the law. Act III (B.C.) of 1862, allowed three months from the date of its passing for the registry of tenures in existence when it was passed, but created after the passing of Act XI of 1859.[1]

§ 135.—The expenses of any survey or local inquiry necessary to enable the Collector to decide upon the propriety or otherwise of granting registration, are to be borne by the person applying therefor, who may be required from time to time to make advances on this account (s. 46). Regulations VII of 1822 and IX of 1825 are in force in every estate in which such survey or local inquiry is being made under the Act. No Civil Court is competent to order the entry of any tenure or farm in the special register ; but the refusal of the Revenue Authorities to register does not affect the title of the holder, whatever it may be.[2] Any person thinking himself wronged by the registry of a tenure or farm, may sue to cancel the same (ss. 47, 48.).

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[1]It may be observed that section 45 of Act XI of 1859 prescribed no time for the registration of *leases* (see section 43), and the oversight was not remedied by Act III (B.C.) of 1862.

[2]It may then be asked—What is the advantage of *special registry*? The protection of the first two classes in section 37 does not depend upon registration : but registration has this advantage, that a registered tenure is protected at once ; whereas, in the event of a sale, an unregistered tenure may be challenged by the auction-purchaser, and the tenant may have to prove his title at considerable expense and some risk. In the case of the third class, the law makes protection depend on registration. The fourth class seems to be in the same category as the first two.

§ 136.—All orders passed under these provisions are open to appeal in the usual course of revenue procedure. The order of a Commissioner for the special registry of a tenure is open to revision within one year by the Board of Revenue, or by the Local Government, on the ground of the revenue not having been sufficiently secured, or of the invalidity of the tenure (s. 49). The Government may, moreover, institute a suit within the period allowed for suits for the recovery of the public revenue,[1] to have the registration pronounced to have been obtained by fraud, to the injury of the Government revenue. A tenure or farm in the hands of a *boná fide* purchaser for value is not, however, to be avoided by reason of such fraud, but it is liable to such amount of rent as would have been fair and equitable at the time of the special registry thereof, such amount to be fixed by the Collector (s. 50).[2]

§ 137.—The protection extended by the above provisions to under-tenures, farms and leases had been for many years sought at the hands of the Legislature, more specially by indigo and sugar planters in the district of Jessore and other places, who required long leases in order to the success of their operations ; and who could not safely lay out capital upon the erection of manufactories and other expensive works, so long as the leases of lands taken for such purposes were exposed to the risk of cancelment by a sale for arrears of revenue. All the best Revenue Officers of the time were in favour of protection,

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[1]See Article 150, Schedule II of Act IX of 1871 ; section 17, Act XIV of 1859 ; and clause 2, section 2, Regulation II of 1805. The time is sixty years.

[2]There were two or three other improvements made in the law by Act XI of 1859, which, though not within the exact scope of the *five* objects mentioned above, may well be noticed. Provision was made for delivering possession of an estate or share sold, by removing any person who might refuse to vacate the same, by proclamation, etc. (s. 29). A party who had obtained a decree of the Civil Court for annulling a sale is allowed only six months to execute it ; and before obtaining an order for restoration to possession, he must repay with interest any amount of surplus purchase-money that may have been paid away by order of a Civil Court (s. 34). When an estate is put up for sale and there is no bid, the Collector may purchase the estate on account of Government for one rupee ; or, if the highest bid be insufficient to cover the arrears up to date of sale, the Collector may purchase the estate for Government at the amount of the highest bid. The Government acquires the property in both cases *subject to the provisions of the Act* (s. 58). In every estate purchased for Government, Regulations VII of 1822 and IX of 1825 are declared to be in force (s. 60).

including Mr. (afterwards Sir) F. Halliday and Mr. (afterwards Sir) J. P. Grant, both of whom subsequently held the office of Lieutenant-Governor of Bengal. Mr. Halliday—remarking that if any great improvement is to happen to this country, it must come by means of the introduction, as under-tenants of zemindárs, of men of skill, capital and enterprise—advocated that no under-tenures of any description should be affected by a sale, and that a purchaser should merely step into the shoes of the former owner. To provide against loss of Government revenue, he would have enacted that, if the bidding at a sale did not come up to the balance due, the contract between Government and the zemindár was to be at an end, and the estate was to lapse to Government, free from all incumbrances other than those existing at the time of the Decennial Settlement. Lord Dalhousie took to some extent the same view. The provisions of 1859 were a compromise between two sets of opinions. The experience of fifteen years has, however, shown that the public concerned have not availed themselves of the facilities for protection to the extent to which it was expected they would. Many causes have been assigned for the comparative failure of the experiment. The most probable of these causes are the elaborate enquiries that have been ordered without due distinction of cases, the slow procedure of the Revenue Authorities, and the great delay and expense consequent upon all these. It may also be that the diminished number of sales has occasioned less need of the remedy, by rendering less frequent the occurrence of the evil,[1] against which it was directed.

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[1]Up to the end of 1872-73, the total number of entries in the *Common Registers* was 2,936, covering an area of 4,509,364 acres, with a rental of Rs. 18,01,588. Of these, 2,894 represents moderate tenures with an area of 4,509,320 acres, and a rental of Rs.18,01,234 ; and 42 represent buildings, etc., containing 44 acres and yielding Rs. 354 rent. The *Special Registers* up to the same time contain 272 entries, covering an area of 820,529 acres, and yielding a rental of Rs. 3,91,454. Of these, 21 are *istimrari tenures* with an area of 415,050 acres and a rent of Rs. 1,14,940 ; 248 are modern tenures, covering 405,467 acres,and having a rental of Rs.2,76,497 ; and three are occupied by buildings, etc., containing 12 acres, and yielding a rent of Rs.17—*Report on the Land Revenue Administration of the Lower Provinces*, 1872-73. The high scale of fees on registration levied under Act III (B.C.) of 1862 has been assigned by some as one of the causes of the registration provisions being so sparingly resorted to. Probably no single cause will sufficiently account for the result ; and of the several causes to which it is to be attributed, the most important is the decrease of the mischief against

§138.—It will have been observed that the legislation during the sixty years from 1799 to 1859 was concerned principally with the sale of estates and the recovery of arrears from proprietors by such sales. Little or nothing was done by way of amending or improving the law for the recovery of arrears by other process, or for the recovery of arrears from farmers, or for the recovery of demands recoverable as arrears of land revenue. Owing to numerous repeals, amendments, and modifications, the law on these points was not as clear as it was desirable that it should be for those who were charged with the duty of administering it. The Bengal Local Legislature accordingly turned its attention to the subject, and Act VII (B.C.) of 1868 was the result.

§139.—One of the most important portions of this Act is the Interpretation Clause, which for the first time gave precise and accurate definitions of the words "proprietor," "revenue," "estate," "tenure," and "demand." "Proprietor," was defined to include *any tenant* by whom *any estate or tenure* is held *directly under Government.* "Revenue" includes every sum annually payable to Government by a proprietor in respect of his estate or tenure, and every sum payable to Government in respect of *tuccavi* or of any money advanced by Government to proprietors for making or repairing embankments, reservoirs, or watercourses, or other improvements on the land held by them.[1] "Estate" means *any land* or

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which these provisions are directed. There is a general *consensus* of opinion amongst the Revenue Authorities in Lower Bengal, that sales for arrears of revenue do not now practically cause much hardship to under-tenants—See paragraph 115 of the *Memorandum on the Revenue Administration of the Lower Provinces,* 1873. In fact, people have got accustomed to the idea of protection, and any attempt at a violation of the principle is sure to be resisted and to lead to litigation, which costs more than the result is worth.

[1]This referred to section 40 of Regulation XIV of 1793, which was afterwards repealed by section 2, Act XXVI of 1871, which Act must now be consulted as to what are "improvements" (s. 3), and as to the mode of recovering advances (s. 15). Such advances are recoverable from the person to whom they were made or his surety, as if they were arrears of land revenue due from such person or such surety. If they cannot be so recovered, they are recoverable as arrears of revenue due on the land specified in the certificate made under section 14, *i.e.*, the land to be improved or other land pledged as security for repayment of the advances. In introducing the Bill which afterwards became Act VII (B.C.) of 1868, the Advocate-General said that the definition of the word "revenue" had reference to the peculiar form of Act XI of 1859, which, not containing any definition of terms, did in an indirect

*share in land*, subject to the payment to Government of an annual sum, in respect of which the name of a proprietor is entered on the general register of revenue-paying estates, or in respect of which a *separate account* has been opened under section 10 or 11 of Act XI of 1859.[1] "Tenure" includes *all interest* in land, whether *rent-paying* or *lakhirâj*, other than *estates*, and all fisheries, which, by their title-deeds, or by the custom of the country, are *transferable*, whether such tenures are resumable or not, and whether the right of selling or bringing them to sale for an arrear of rent may or may not have been specially reserved by stipulation in any instrument.[2]

§ 140.—"Demand" means any of the following public demands, arrears of which are by law recoverable as arrears of revenue, *viz.*, (1) sums due from public accountants and their sureties on account of loss or defalcation in the accounts; (2) sums due from sureties for farmers; (3) arrears of revenue payable in respect of any tenure which the Collector does not think fit to sell under section 11 of the Act; (4) the authorized expenses of *batwaras* or partitions, or fines imposed under section 20 or 21 of the Batwara Regulation, XIX of 1814; (5) expenses constructing, altering, or extending embankments (see clause 2, section 11 of Act XXXII of 1855, and Act VII [B.C.] of 1866; (6) the difference between a bid at a sale not followed up by payment of the purchase-money, and the sum eventually realized by the sale (section 23, Act XI of 1859); (7) sums payable for water-rate (Act VIII [B.C.] of 1867);

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and inferential way deal with certain public demands, such as *tuccavi* and money advanced for the making and repairing of embankments, reservoirs, and watercourses, and gave the same absolute power of sale, and title under that sale in respect of such demands, as in the case of estates sold for arrears of revenue proper. That was why the term "revenue" was extended to those demands, instead of including them with other demands which formed the principal subject of the later sections.—*Proceedings of the Council of the Lieutenant-Governor of Bengal for the purpose of making Laws and Regulations—Supplement to the Calcutta Gazette of 22nd April* 1868.

[1]Under the former law, there was a doubt whether or not *shares of estates* could be sold for arrears of revenue due on them. To make it quite clear that that power was intended to be given by the Act, the term "estate" was so defined as to place persons who desired that they should be separately assessed in the possession of proprietors.—*Idem.*

[2]Such right is always reserved in the case of *patni* tenures. It will be observed that *transferability* is the essence of what is made to consitute a "tenure," and that it is immaterial whether the land be revenue-paying or *lakhirâj*.

(8) fines on proprietors and farmers for non-attendance, etc., (Act XX of 1848); (9) any other demand, which by any law for the time being in force is recoverable as arrears of revenue.

§ 141.—We have seen that the old Regulation law, which required the issue of *talab-chitis*, *dastaks*, or other process of demand on persons from whom arrears of revenue or other demands similarly recoverable were due, was repealed by clause 2, section 2, Regulation XI of 1822. The repeal of these provisions did not *forbid* the making of a preliminary demand before proceeding to realize by compulsory process. The practice of so doing had, however, wholly ceased. It was now thought desirable to give Collectors a discretionary power of issuing preliminary notices, and it was accordingly enacted that the Lieutenant-Governor might, by an order published in the *Gazette*, empower all Collectors in any district in such order mentioned, if they shall think fit, to cause such notices as shall be in such order specified, to be served upon proprietors or persons liable to any demands, before proceeding to compulsory process under either of the Acts. Provision was also made for levying the cost of serving these notices from the persons on whom they were served (s. 6), and for the mode of service (s. 5.).

§ 142.—The power to sell *lakhiráj* and other kinds of interest in land had been somewhat doubtful. Sales of *lakhiráj* land, which had been made under the procedure of Act XI of 1859, were validated (s. 9), and it was enacted that whenever any revenue payable to Government in respect of any *tenure not being an estate* (see the definition of "tenure" above) shall be in arrear after the latest date of payment, the Collector may proceed to affix the notices mentioned in section 5 of Act XI of 1859, and to sell such tenure in the manner provided by this Act for the sale of estates for arrears of revenue *due on account of the same* (s. 11). This section was repealed, and a new section substituted therefor by Act II (B.C.) of 1871. In the new section the words about affixing the notices mentioned in section 5[1] of Act XI of 1859, and the words "due on account of the same" above italicised, are omitted; and a proviso is added, which enacts that no tenure shall be sold for the recovery of arrears of revenue other than those

[1]The figure 5 appears to have been a verbal mistake for 6—See *Proceedings of the Council of the Lieutenant-Governor of Bengal for the purpose of making Laws and Regulations—Supplement to Calcutta Gazette of 30th November* 1870, *page* 777.

of the current year, or of the year immediately proceeding, nor for the recovery of arrears of revenue due by tenures under attachment by order of any Judicial authority, unless and until after a notification specifying the nature and amount of the arrear, and the latest date on which payment thereof shall be received shall have been published in the usual way for not less than *fifteen clear days* preceding the date fixed for payment according to section 3 of Act XI of 1859.[1]

§ 143.—Purchasers of tenures so sold acquire them free from all incumbrances imposed upon them after their creation, or after the time of settlement, whichever may have last occurred, and are entitled to avoid and annul all under-tenures,[2] and forthwith to eject all under-tenants with the following exceptions :—

I.—Same as first exception in section 37 of Act XI of 1859 (*ante*, §§ 118 & 132).

II.—Same as second exception in section 37 of Act XI of 1859 (*ante*, §§ 118 & 132).

III.—Tenures created or recognised by the settlement proceedings of any current temporary settlement, as tenures bearing a rent which is fixed for the period of such settlement.

IV.—Tenures of lands whereon dwelling-houses, manufactories, or other permanent buildings have been erected, or whereon permanent gardens, plantations, tanks, canals, places of worship, or burning or burying grounds have been made (s. 12); but the rent of this last-mentioned class may be

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[1]In the *Memorandum on the Revenue Administration of the Lower Provinces of Bengal, published in* 1873, it is said (paragraphs 33 and 234) that in estates held *khas*, or under the direct management of Government, the Collector may proceed, under the above provisions to recover *rents* due on account of transferable tenures ; and that in Wards' estates and attached estates, he has the same powers in respect of middlemen who hold from himself direct and not through the manager. This follows from the definition of the word "proprietor"—and see the Advocate-General's speech on introducing the Bill—*Proceedings of the Council of the Lieutenant-Governor of Bengal for making Laws and Regulations—Supplement to the Calcutta Gazette of 22nd April* 1868.

[2]The Act does not contain any definition of "under-tenure." Is the latter half of the compound word to be construed according to the definition? and is *transferability* of the essence of an "under-tenure" also ?

enhanced in the manner prescribed by any law for the time being in force, if it can be shown that any such tenure is held at what was originally an unfair rent, unless it has been held for a term exceeding twelve years at a fixed rent equal to the rent of good arable land (s. 13). Purchasers cannot, however, eject raiyats having a right of occupancy at a fixed rent, or at a rent assessable according to fixed rules under the laws in force, nor enhance the rent of such raiyats otherwise than in the manner prescribed by such laws, or otherwise than as the former proprietor, irrespectively of all engagements made since the time of settlement, may have been entitled to do (s. 14).[1]

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[1]The above is taken *verbatim* from section 37 of Act XI of 1859. If, instead of being under the direct management of Government, the estate were in the hands of a private proprietor, and if the tenure therein were sold under the provisions of Act VIII (B.C.) of 1865, the purchaser would acquire it (s. 16) "free of all incumbrances which may have accrued thereon by any act of any holder of the said under-tenure, his representatives or assignees, unless the right of making such incumbrances shall have been expressly vested in the holder by the written engagement under which the under-tenure was created, or by subsequent written authority. Provided that nothing herein contained shall be held to entitle the purchaser to eject *khúdkásht* raiyats, or resident and hereditary cultivators, nor to cancel *boná fide* engagements made with such class of raiyats or cultivators aforesaid, unless it be proved in a regular suit brought by the purchaser for the adjustment of his rent, that a higher rent would have been demandable at the time such engagements were contracted by his predecessor. *Nothing in this section shall be held to apply to the purchase of a tenure by the previous holder thereof through whose default the tenure was brought to sale.*" The language of this section (especially *khúdkásht*, &c.') is that of the old Sale Laws, Acts XII of 1841 and I of 1845. The following cases are important as explanatory of its meaning: *Shahabúdín* v. *Fatteh Ali and another*, B. L. R., Sup. Vol., F.B. 646 (Sale, under section 105, Act X of 1859, for arrears of rent, of an under-tenure other than that the right of selling which for such arrears has been especially reserved in its title-deed, does not void incumbrances), approved by the Privy Council in *A. J. Forbes* v. *Latchmipat Singh and others*, X. B. L. R., 139, and XIV Moo. Ind. Ap., 330; *Mír Jasimuddin* v. *Sheikh Mansur Ali and others*, VI B.L.R. Ap. 149 (Sale under Act VIII of 1835—but to the same effect); *Kishoreban Mahant* v. *Dúrga Churn and others*, III R. C. & C. R. Civ. Rul., 203 (Procedure under old and new law); *Sham Chand Mitter* v. *Jagat Chandra Sirkar and others*, XXII W. R. 541 (Right under section 16, Act VIII [B.C.] of 1869, belongs to purchaser of *entire* under-tenure only; *Nil Madhab Karmakar* v. *Shibu Pal*, V. B. L. R. Ap., 18 (A right of occupancy acquired under former holder of the tenure is not an incumbrance created by him): *Hara*

§ 144.—We have seen that section 44 of Regulation XIV of 1793 enacted that, if the sale of the revenue-paying lands of a defaulting proprietor, or farmer, or surety, did not produce sufficient for the liquidation of the public demand, any other real and personal property belonging to him might be attached and sold to make good the deficiency, under the same rules as the revenue paying lands were directed to be sold, so far as those rules were applicable. This section was repealed by Act VII (B.C.) of 1868, section 15 of which enacts that whenever an *estate* or *tenure* shall have been sold for the recovery of arrears of revenue due on account of the same in pursuance of the powers and provisions of Act XI of 1859, of *this* Act, and the produce of such sale after defraying thereout the expenses of such sale, shall have been insufficient for the liquidation of all arrears of the revenue of such estate or tenure, the Collector of the District shall make, under his hand, a certificate (in the form annexed to the Act) of the amount of arrears so remaining unliquidated. Such certificate is to have the force and effect of a decree of the Civil Court, and the Government is to be deemed to be the plaintiff, and the person named therein as debtor to be the defendant (s. 17).

§ 145.—Whenever any estate is held by any *farmer, and arrears of revenue* are unpaid from such farmer, in respect of

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*Sundari Dasi* v. *Kisto Mani Chaudhurain and others*, V. B. L. R. Ap. 37, section 16, Act VIII (B.C.) of 1865 does not apply to the purchaser of the interest of the holder of a fractional share of an under-tenure: *Bholanath Ghosal and others* v. *Kadernath Banerji*, XIX W.R. 106 (The section gives no right to avoid rights of occupancy which existed before the creation of the tenure): *Umasundari Dasi* v. *Birbul Mandal and others*, III B. L. R., 183. It would be a nice question to determine exactly what is the difference between the rights of a purchaser (1) of a tenure sold under Act VIII (B.C.) of 1865, the estate being in private hands ; and (2) of a tenure sold under Act VII (B.C.) of 1868, the estate being under the direct management of Government. It may be observed that the latter Act contains no provision for the case of the former owner purchasing, such as that above italicised and as that contained in section 53 of Act XI of 1859. The word "tenure" in Act VII (B.C.) of 1868 is equivalent to "under-tenure" as occasionally used in Act VIII (B.C.) of 1765, in which Act "tenure" and "under-tenure" are used indiscriminately for the same thing. See for example in the very section above quoted. The preamble to the same Act speaks of "*patni talúks* and *other saleable under-tenure.*" Now a *patni* is not an *under*-tenure but a *tenure*, and is so spoken of in Regulation VIII of 1819. *Dar-patnis* and *se-putnis* are *under-tenures* being *under* the *patnidar* and *dar-patnidar* respectively.

such estate, for one month after the latest day of payment fixed in the manner prescribed in section 3 of Act XI of 1859, the Collector is to make, under this hand, a certificate of the amount of arrears so remaining unpaid, in the form annexed to the Act, and is to cause the same to be filed in his office (s. 16). Such certificate is to be have the force and effect of a decree of the Civil Court, Government being deemed to be the plaintiff, and the person named as debtor in the certificate to be the defendant (s. 17).[1]

§ 146.—Whenever any arrears of any *demand* (see the definition) shall be unpaid by any person liable to pay such demand to a Collector, for one month after service of notice in writing and under the Collector's hand, requiring payment, the Collector is to make a certificate in the form already referred to as attached to the Act, and to file it in this office (s. 18). When the demand is payable to any officer other than a Collector, such officer[2] is to give to the Collector a notice in the form attached to the Act, and, on receipt of this notice, the Collector is to proceed to make a certificate and file it in his office (s. 19). The certificate, made under these two sections, *i.e.*, a certificate for arrears of *demands* as opposed to a certificate for arrears of *revenue* has, as *regards the remedies for enforcing the same, and subject to the subsequent provisions of the Act and so far only*, the force and effect of a decree of a Civil Court, the Government being deemed to be plaintiff, and the person named as debtor in the certificate to be defendant (s. 20). The effect of the words above in italics is not very clear at first sight: but what is meant is that a certificate for *arrears of demands* is to have the effect of a *decree* so far as regards its *execution* only, while it may be contested *on its merits* in the Civil Court.[3] A

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[1]Recovery of arrears from the *sureties* of farmers is provided for by the definition of "demand."

[2]Under section 4 of Act XII of 1850, the Head of the Office in which a public accountant is employed may himself proceed against such accountant or his sureties for any loss or defalcation in the accounts. This section has not been repealed or amended by Act VII (B.C.) of 1868. It certainly was the intention of the framers of this latter Act that Heads of Offices should in future proceed through the Collector only; but it may be a question whether they have not a concurrent jurisdiction, as the two Acts now stand.

[3]When the Bill was before the Council, it was objected that the difference between the effect of the two certificates did not sufficiently appear from the language of the two sections (17 and 20),

certificate for *arrears of revenue* on the other hand, is as conclusive in all respects as a decree of Court.

§ 147.—Whenever the Collector makes and files in his office a certificate of arrears of either kind, he is to issue a notice to the defendant; and, after the service of this notice, the certificate *binds the immoveable* property of the defendant within the jurisdiction of the Collector, as if a prohibitory order had issued, and an attachment had been executed against such property under Act VIII of 1859. It will also bind the defendant's immoveable property situate within the jurisdiction of any other Collector, in whose office a copy of the certificate is filed from the date of filing of such copy (s. 21). Any person aggrieved by the certificate may petition the Collector within a month. The Collector is to fix a day for hearing the petition; and, for the purpose of hearing, has all the powers conferred by Act VIII of 1859 for hearing and determining claims to attached property and for enforcing the costs of such claims (s. 22). Orders made by a Collector are appealable within one month to the Commissioner (s. 23).

§ 148.—All certificates may be enforced in all or any of the ways provided by Act VIII of 1859 for the enforcement of decrees for money; and the practice and procedure under the law for the time being in force in respect of *sales* in execution of decrees, arrests in execution of decrees for money, execution of decrees by imprisonment, claims to attached property, execution of decrees out of the jurisdiction of the Courts by which they were passed, are applicable to every execution issued for levying the monies expressed in such certificate, save that all the duties, powers, and authorities imposed or conferred upon the Court are to be exercised by the Collector in whose office any such certificate, or any copy thereof, transmitted under the provisions of section 286 of Act VIII of 1859, shall have been filed (s. 24). Registers of Certificates are kept in Collector's offices, and are open to the inspection of any person on payment of a fee of eight annas (ss. 25 and 26). As a certificate binds the immoveable property of a defendant after the service of notice upon him, a search in these registers is necessary in order to ascertain whether the property of a person

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and the words "and so far only" were added; but I think even this has not made the meaning as clear as it might have been—see *Proceedings of the Council of the Lieutenant-Governor of Bengal for the purpose of making Laws and Regulations—Supplement to the Calcutta Gazette of 15th July* 1868, *page* 524.

about to sell is free from lien, and so whether he can give a good title. When the amount due under a certificate is paid, the Collector is to enter up satisfaction under this own hand and signature, and is to transmit a memorandum thereof to any other Collector in whose office a copy of the certificate has been filed, and, in the case of a *demand* payable to any other officer, to such officer. Sums levied or received by a Collector in whose office a copy has been filed are to be transmitted to the Collector in whose office the orignial certificate was filed (ss. 27 and 28).

§ 149.—In order to improve the titles of purchasers at these Government sales it was enacted that every certificate of title given to a purchaser under section 28 of Act XI of 1859, or section 11 of Act VII (B.C.) of 1868, shall be conclusive evidence in favour of such purchaser, and of every person claiming under thim, that *all notices* required by either Act to be served or posted, have been duly served or posted; and the title of any person who shall have obtained any such certificate shall not be impeached or affected by reason of any omission, informality, or irregularity as regards the serving or posting of any notice in the proceedings under which the sale was had, at which such person may have purchased (s. 8). At the same time, in order to provide for full publicity, provision was made for posting an additional notice, namely, at the subdivisional kachahrí, within the jurisdiction of which the estate or some portion of it is situate (s. 7).

§ 150.—It will appear from the preceding account that the law now operative for the realization of arrears of land revenue and of demands recoverable as arrears of land revenue in the Lower Provinces of Bengal, is contained in the two Acts, XI of 1859 and VII (B.C.) of 1868.[1] The general opinion of the Revenue Authorities is that this law is in a sufficiently satisfactory state. In paragraph 116 of the *Memorandum on the Revenue Administration of the Lower Provinces of Bengal*, the Board of Revenue say :—"There can be no manner of doubt that, on the whole, the working of the present Sale Law has been most beneficial and satisfactory, and that, except where experience may have proved the necessity for some slight amendment in its minor details, it would be most inexpedient to alter a law with which the people have become thoroughly acquainted, and under which the Government revenue is

[1]As amended by Act II (B.C.) of 1871.

realized without oppression and with but very rare instances of individual hardship, and these, too, such as in the majority of cases the local authorities have the power to remedy." In reply to the question—"Do sales usually occur in consequence of inability on the part of proprietors to pay the Government demand, or are they purposely brought about to give purchasers a good title?" Commissioners of Divisions were generally of opinion that sales now rarely take place owing to the inability of proprietors to pay, the only exceptions being cases in which the estate, or a large portion of it, may have diluviated. Owing to the security of the title obtained by a purchaser at a Government sale, higher prices are given for land so purchased than for land brought by private contract,[1] and hence occasionally persons who, from extravagance or other cause, are forced, or who have resolved, to part with an estate, purposely let it fall into arrear that it may be sold to the best advantage at a Government sale. The arrear of revenue being deducted, the proprietor gets the balance, without any of the trouble or expense inseparably connected with a private conveyance, which has to be registered.[2]

§ 151.—It is also the general opinion that sales do not now practically cause much hardship to under-tenants who are not, as a rule, interfered with under the law, recourse being had in most cases to the provisions of the Rent Law to obtain an enhancement of rent, where tenures may have been held, prior to sale, at inadequate rents.[3] The Board of Revenue also consider that few sales are now attributable to fraud and chicanery practised by agents at the expense of their principals. In order to show how far their conclusions on these points are

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[1]Apart from the ordinary flaws in title, it is no uncommon thing in India for the same land to be deliberately and fraudulently mortgaged two or three times over, the previous incumbrance being always concealed from persons who are subsequently induced to lend money on the security of the same property. The *benami* system is another source of fraud. Even when there has been no *mala fides* before the sale, the purchaser is not altogether safe, for the seller is not unlikely to endeavour to get back the land through some relation or third party by means pretended previous conveyance forged and antedated for the purpose.

[2]It may be observed that the only persons who can safely resort to this way of getting the best price for their property, are persons not indebted under decrees. In the case of persons so indebted, the surplus proceeds would be sure to be attached in the Collector's hands in execution of the decrees.

[3]My own experience, drawn from the Civil Courts, leads to the same conclusion.

borne out by statistics, they refer to the results of the ten years from 1862 to 1872. The average number of estates on the revenue roll during that period was 219,408, and the average annual number of sales of whole estates during the same period was 686. The average annual proportion of sales to estates was therefore 312 per cent. only.

§152.—Another argument in favour of the existing law is drawn from Orissa, where up to 1853, the *dastak* system was in force, and was found extremely unsuccessful in its operation. The introduction of the Sale Law brought results wholly satisfactory to the people, and, after the first year or two, when they became thoroughly conversant with the law and its requirements, sales became very infrequent, and it is believed that few have since occurred, except where proprietors have intentionally allowed their estates to fall into arrear for the express purpose of bringing them to sale. "There appears, then," it is said in conclusion, "to be no reason for any material alteration in the existing law. It works well, both for the interest of Government and of the proprietors. No serious complaints have been made against it. It is well known to, and accepted by, the people ; and no other system of enforcement of the Government demands would probably be found so beneficial or so acceptable to all parties concerned."

§ 153.—The Province of Benares was, as we have already seen, finally vested in the Company in 1775, ten years after the acquisition of Bengal, Bahár, and Orissa. A *sanad* and *patta* were granted to Raja Cheit Singh on the 15th April 1776, by which his former rights were confirmed to him on condition of his paying an annual tribute of 22,66,180 sicca rupees at Benares, or 22,21,745, if paid at Calcutta. When Cheit Singh, unable or unwilling to pay the fine of fifty lakhs imposed on him by Mr. Hastings, was expelled in 1781, a patta was granted to his successor, Rájá Mehipnarain, by which the zemindári was confirmed to him at an annual *jama* of 40,00,000 Benares sicca rupees exclusive of jagírs and pensions. Up to 1791, the Resident stationed with the Rájá had not interfered in the internal management of the zemindári ; but, as Mehipnarain's age disqualified him for personal superintendence, the administration of the revenue came now to a certain extent under the control of the Resident. In 1787, in order to correct abuses, this officer was entrusted with fuller control over the collections and settlement. Finally, on the 27th October 1794, an agreement was entered

into between the Rájá Mehipnarain and the Resident Mr. Duncan on the part of the Company, by which the system established in the Provinces of Bengal, Bahár, and Orissa in 1793 was to be introduced into the Province of Benares ; and this was effected by Regulation I of 1795, which contains the conditions of the Permanent Settlement for this Province.[1]

§ 154.—The Ceded and Conquered Provinces were at first termed *The Upper Provinces* by way of distinction from *The Lower Provinces* of Bengal, Bahár, and Orissa, and the intermediate Province of Benares. An account has already been given of the territories which constituted these provinces, and of the time and manner of their acquisition. The territory ceded by the Nawáb Vizier in November 1801 was placed under a Lieutenant-Governor (the Hon'ble Henry Wellesley) and a Board of Commissioners, who are entrusted with the settlement of the revenue and the formation of a temporary scheme of internal administration, until sufficient information could be acquired to form the basis of a more permanent system. The Company's servants stationed in the districts exercised the united powers of Magistrates, Collectors, and Judges ; and, in addition to these duties, endeavoured to collect detailed information concerning the country placed under their care. The Commissioners discharged the functions of Judges of appeal and circuit, and also assisted the Lieutenant-Governor and the Governor-General in Council in preparing Regulations adopted to the condition and requirements of the new provinces. This plan of administration continued until the beginning of 1803, when a settlement of the land revenue having been concluded for a term of three years, the Lieutenant-Governor resigned his office and the provincial Board was dissolved.

§ 155.—The system introduced into the Lower Provinces by Lord Cornwallis in 1793, and which is generally identified with his name, had been made the subject of the highest commendation, while experience had not yet disclosed these defects which subsequent time has brough to light. It was, therefore, decided to introduce this system into the Ceded Provinces of oudh with such modifications as the information collected in

[1]In section 2 of this Regulation and in Regulation II of 1795 will be found an account of what was done in the way of settlement, &c., in the Province of Benares before the assessment was fixed in perpetuity.

the short space of a year and a few months showed to be advisable. Accordingly, on the 24th March 1803, a set of Regulations was passed for the provinces ceded by the Nawáb Vizier, which consisted of the Regulations already passed for Bengal, Bahár, and Orissa, with slight alterations and additions,[1] and which incorporated and confirmed[2] a proclamation issued by the Lieutenant-Governor and Board of Commissioners on the 14th July 1802. This proclamation had notified to the zemindárs, táluqdárs, and others concerned, that, at the commencement of the Fasli year 1210, a settlement would be concluded for a period of three years; that, at the expiry of this period, a second settlement would be made for a like term at a jama formed by adding to the jama of the first settlement two-thirds of the difference between such jama and *the actual yearly produce of the land* at the time of the expiry of the first settlement;[3] that, at the end of those two triennial periods, a further settlement would be formed for four years at a jama formed by adding to the jama of the second period three-fourths of the net increase of revenue during any one year of that period; that, at the close of the ten years comprised in these three periods, a permanent settlement would be concluded for such lands as should be *in a sufficiently improved state of cultivation to warrant the measure*, on such terms as Government might deem fair and equitable. The promise thus held out of a permanent settlement to be concluded at the expiry of an experimental period of equal length with that previously adapted for Bengal, Bahár, and Orissa was made without any reservation as to the subsequent approval of the Court of Directors.

§ 156.—The Regulations made for the Ceded Provinces were in 1804-1805[4] extended to the Conquered Provinces and to the territory in Bundlekund ceded by the Peiswa, and a plan of settlement precisely similar was notified in proclamation contained in Regulation IX of 1805 passed on

[1]A glance over the Titles of the Regulations of 1803 in the Chronological Table will show the general similitude between the two sets of Regulations.

[2]See section 29 of Regulation XXV of 1803 and section 53 of Regulation XXVII of 1803.

[3]In consequence of a severe drought which prevailed in the Fasli year 1811, this increase of assessment was not exacted—See sections 1 and 2 of Regulation VI of 1805.

[4]See the Regulations of these years, more especially Regulation VIII of 1805.

the 11th July of that year. The oversight in promising a permanent settlement without reference to the Court of Directors was corrected by section 5, Regulation X of 1807, by which proprietors were informed that the jama assessed on their estates in the last year of the settlement immediately ensuing the then existing settlement would remain fixed for ever, if they were willing to engage for the payment of the public revenue on those terms, and if the arrangement received the sanction of the Honourable the Court of Directors. This sanction was, however, withheld as before the time came from which the settlement was to become permanent, the very strongest reasons had arisen for doubting the expediency of settling the revenue in perpetuity in the then condition of the country and upon the information then available.

§ 157.—When the second of the triennial periods was drawing to a close, and it became necessary to arrange for the quartennial settlement of the provinces ceded by the Nawáb Vizier, it was naturally considered to be a matter of the first importance that this settlement, which was intended to be perpetual, should be made upon the most accurate and reliable materials. The Board of Revenue at Calcutta, who had charge of the Revenue Administration of the Upper Provinces from the dissolution of Mr. Wellesley's Government, was too remote to exercise an efficient control and superintendence. It was, therefore, resolved to create a Special Commission for the settlement of these provinces; and two Commissioners, one a Member of the Board of Revenue, and the other a Civil Servant of experience,[1] were accordingly appointed and vested with all the duties, powers and authority previously exercised by the Board of Revenue.[2] The primary object of this Board of Commissioners was the superintendence of the quartennial settlement of the provinces ceded by the Nawáb Vizier, and of the second triennial settlement of the Conquered Provinces and Bundlekund; and it was at first intended that the Commission should cease to exist as soon as this work was completed. In less than two years after, *The Board of Commissioners in the Upper Provinces* was, however,

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[1]The Commissioners appointed were Messrs. Cox and Tucker.

[2]Sections 1 to 4 of Regulation X of 1807. A Secretary, an accountant, and a competent staff of native officers were attached to the Board.

declared to be permanent by Regulation I of 1809, and was further vested with the administration of the land revenue in the Province of Benares.

§ 158.—The Commissioners, after being engaged about a year in collecting the information, submitted a report dated the 13th April 1808, in which, having dwelt upon the large quantity of arable land (one-fourth) still uncultivated, the insufficient knowledge of the then state of the country or of its means of future improvement, the sparseness of the population, the want of capital necessary in order to make improvements, the absence of commerce the illegal alienations of revenue-paying lands, the numerous disputes as to the proprietary rights, the small acquaintance of the people with the English system, and other facts, they submitted it as their deliberate and unqualified opinion that a permanent settlement of the Ceded and Conquered Provinces was at that moment unreasonable. The Court of Directors being made aware of this report, to the recommendations contained in which the Indian Government were wholly opposed, informed the Governor-General in their final despatch[1] upon the subject, that they had come to the conclusion that a perpetual settlement of these provinces would then be premature, as being likely to result in a large ultimate sacrifice of revenue. Whether such a measure would be eligible at a future period, and if so, with what modifications, were questions which they left for future discussion. At the same time they directed that no settlement should be made for a longer period than five years.

§ 159.—Upon receipt of these instructions, the absolute promise of a permanent settlement[2] was rescinded:[3] but the rule that, at the close of ten years comprised in the two triennial and one quartennial periods a permanent settlement would be concluded for *such lands as might be in a sufficiently improved state of cultivation to warrant the measure, on*

[1]General letter of the 27th November 1811. The Commissioners, aware of the views of the Indian Government in favour of an immediate permanent settlement, proved the strength of their convictions and the sincerity of their opinions by resigning rather than be instruments of measures which their judgment, founded on local observation, could not approve.

[2]As contained in section 5, Regulation X of 1807.

[3]By section 2, Regulation IX of 1812 for the Ceded Provinces: and section 2, Regulation X of 1812, for the Conquered Provinces and Bundlekund.

*such terms as Government should deem fair and equitable,* was declared to be in full force and effect.[1] The Board of Commissioners was accordingly required to ascertain what estates were in a state of cultivation to warrant the conclusion of a permanent settlement, and also to submit a report specifying the estates which did not appear to be in a sufficiently improved state of cultivation to admit of the conclusion of a permanent settlement without a sacrifice of those resources which might thereafter be derived from them for the exigencies of Government.[2] In the case of estate of the former class, it was declared that a revision would be made of the jama on the principle of leaving to the proprietors a net income of ten per cent. thereupon, exclusive of charges of collection, and the assessment so made, would, after approval by the Governor-General in Council,[3] remain fixed for ever.

§ 160.—When the Board of Commissioners proceeded to inquire what estates were in a sufficiently advanced state of cultivation to warrant the conclusion of a permanent settlement, the first question which had to be determined was, what was the precise point of improvement which should be accepted as sufficient to warrant the measure, and they accordingly applied (4th September 1812) for specific instructions, suggesting that the sale of waste land which should exclude from a permanent settlement ought not to vary more than from one-third to one-fourth. This proposition was generally approved. The Court of Directors, however, subsequently noticed[4] that this point was not determined in the Regulations, and could not be determined by any prospective Regulation, that the question was left completely open for the future

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[1]By section 3, Regulation IX of 1812, for the Ceded Provinces, and section 3, Regulation X of 1812, for the Conquered Provinces and Bundlekund. The rule itself is contained, for the former in clause 4, section 29, Regulation XXV of 1803, and in clause 2, section 53, Regulation XXVII of 1803; and for the latter in section 7, Regulation IX of 1805, and in clause 6, section 4, Regulation XII of 1805.

[2]Sections 4 and 5 of Regulation IX of 1812, and Sections 4 and 5 of Regulation X of 1812.

[3]This was going beyond the authority given by the Court of Directors, who, in their letter of 1st February 1811, ordered that "no settlement shall be declared permanent till the whole proceedings preparatory to it have been submitted to us, and till your resolutions upon these proceedings have received sanction and concurrence."

[4]Despatches of 16th March 1813 and 17th March 1815.

exercise of the discretion of Government, and that "it was for the constituted authorities at home, aided by the information transmitted from India, to decide whether the land was or was not in such a state as to warrant a measure irrevocable in its nature and involving so materially, nct only the financial interests of the Government but the welfare and prosperity of those living under its protection." The resolution of the Court of Directors that no settlement should become permanent until it had received their sanction, and their intimated intention of not giving such sanction except upon the very fullest information[1] were an effectual check upon anything like precipitancy on the part of the authorities in India. Indeed, a considerable time was suffered to elapse before any active steps were taken to obtain that extended information which would enable the Government of India to submit their propositions in a complete shape to the Home Authorities. This was due in the first place to the difficulty of deciding what measures were to be adopted in order to collect the required information; and, secondly, to pressure of work arising from the necessity of making a new settlement[2] at the close of the decennial period, which terminated in the Ceded Provinces with the Fasli year 1219 (1811-12), and in the Conquered Provinces and Bundlekund with the Fasli year 1222 (1814-15).

§ 161.—On the expiry of the decennial period in the Ceded Provinces, a settlement was made for a period of five years, from 1220 to 1224 inclusive (1812-13 to 1816-17), and was subsequently continued[3] for a further period of five years, *i.e.*, 1225 to 1229 inclusive (1817-18 to 1821-22). Similarly, on the expiry of the decennial period in the Conquered Provinces and Bundlekund, a settlement was made for five years, 1223 to 1227 (1815-16 to 1820-21), and extended[4] for a further similar period—1228 to 1232 (1820-21 to 1825-26). A considerable amount of information had been obtained in

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[1]See *ante*, p. 55.

[2]If, as was originally intended by the Indian Government, the settlement of the quartennial period had become permanent, no new settlement would have been necessary. The orders of the Court of Directors arrived just before the expiration of the quartennial period in the Ceded Provinces. On its expiration some of the zemindárs were left without engagements, it being impossible to arrange the terms of a fresh settlement in time.

[3]See Regulation XVI of 1816.

[4]See Regulation IX of 1818.

making these settlements, and during the period of their operation, the Collectors had acquired a further and most valuable knowledge of their districts. No systematic plan had, however, been laid down for conducting the operations necessary to settle the questions preliminary to a permanent settlement, and at the end of 1818 almost nothing had been done towards fulfilling the promises held out then for thirteen years.[1] The Board of Commissioners had expressed their doubts as to the accuracy of the materials upon which the settlement of Cawnpore (1220 to 1224) had been made; and notwithstanding that the land fit for cultivation, but uncultivated, was generally less than one-fifth, the Government resolved, and the Court of Directors confirmed the resolution that the settlement should not be made permanent. The same principle was followed with respect to Bareilly, Shahjahanpore, and other districts. The second of the quinquennial periods of settlement of the Ceded Provinces was now drawing to a close, and it became necessary to provide for making a new settlement, as the settlement already made was not to be perpetual in any of the districts.

§ 162.—In this state of affairs Mr. Holt Mackenzie, the Secretary to the Board of Commissioners, wrote his very able "*Memorandum regarding the past settlements of the Ceded and Conquered provinces with heads of a plan for the Permanent Settlement of those Provinces*,"[2] which, it was at once acknowledged, suggested an apparently practical plan of proceeding. Effect was finally given to his suggestions by Regulation VII of 1822, which declared the principles according to which the

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[1]The Board of Commissioners, in their Report of the 27th October 1818, strongly advocated that the benefits of a permanent settlement be no longer withheld from the Ceded and Conquered Provinces; but they did not suggest any tangible mode of obtaining the information which the Court of Directors required as preliminary to their sanction. They considered a minute professional survey not to be feasible, owing to the length of time required for its completion, the *data* for this conclusion being derived from the performances of a Lieutenant Gerard, who had been appointed surveyor under the Board and employed in the Deyra Dun. They therefore recommended that the Collectors should *ascertain cursorily* the comparative state of the improvement of the villages, and that all villages should be declared permanently assessed, in which the Collector, *on this cursory survey*, should be of opinion that the reclaimable land not in cultivation did not bear a greater proportion than one-fourth to the cultivated land.

[2]Dated 1st July 1819. For the suggestions, &c., therein contained, see *ante*, p. 56, note.

settlement of the Land Revenue in the Ceded and Conquered Provinces, including Cuttack, Puttaspore, and its Dependencies, was to be thereafter made.[1] In order to allow time for operations under the Regulation, the settlements of the Ceded Provinces and of Cuttack, which were about to expire, were continued in force for a further period of five years :[2] and, two years afterwards, the settlement of the Conquered

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[1]See Title and Preamble.

[2]Clauses 1 and 2 of section 2. This carried the settlement down to the end of 1234 (1826-27). It may be convenient to notice here the settlement history of Cuttack, which, though territorially a part of the Lower Provinces, is connected, so far as this history is concerned, with the Upper Provinces. This Province was ceded to the East India Company, as we have seen, in January 1804 ; and it was then placed under the management of two Commissioners, who took immediate steps for securing the rights of the landholders in the *Mogulbandi* lands, which, by established usage, were considered responsible for the revenue assessed thereupon, and were held subject to this usage. On the 15th September 1804, a proclamation was issued to the effect that a settlement would first be made for a period of one year (1212) : that at the end of 1212, a settlement would be made for *three* years (1213-14-15) at a jama formed upon a just and moderate consideration of the receipts of 1212 and former years : that, at the expiry of this triennial period, a further settlement would be made for a period of *four* years at a jama obtained by adding to the annual rent to the preceding term two-thirds of the net increase of any one year of such term : that, at the expiry of this quartennial period, a further settlement would be made for a period of *three* years at a jama obtained by adding to the annual rent of the preceding term three-fourths of the net increase of any ine year of such term : and that, at the expiration of these four settlements including a period of eleven years (*i.e.*, to end of 1222), a permanent settlement would be concluded for *such lands as were in a sufficiently improved state of cultivation to warrant the measure, on such terms as Government should deem fair and equitable.* This proclamation was incorporated in Regulation XII of 1805, which recites the measures taken by the Board of Commissioners and provides generally for the settlement of the province. The rule that the jama of the last year of the quartennial settlement should become perpetual was extended to Cuttack by section 6, Regulation X of 1807, but was again rescinded by section 2, Regulation VI of 1808, which Regulation enacted that, instead of a quartennial settlement, a settlement should be made for one year (1216), and then a fresh settlement for three years (1217-18-19), and that the jama of 1219 should be fixed for ever, *if the Court of Directors gave their sanction.* By the same Regulation a Special Commission was created for superintending the settlement which, on the completion of this work, was abolished by Regulation IV of 1810, and the powers of the Commissioner transferred to the Board of Revenue. The orders of the Court of Directors being opposed to the perpetuity of the settlement, section 2, Regulation X of 1812, rescinded the absolute promise of a permanent settlement contained in sections 5 and 6 of Regulation X of 1807 ; but section 3 of the same Regulation

Provinces and of Bundlekund, which was then on the point of expiring, was extended for a further similar period.[1] In 1826 it was found necessary to extend the settlement of the Ceded Provinces for a further period of five years—to the end of 1229 (1831-32)—"until a careful revision of the settlement can be completed"—and this was accordingly done by section 2, Regulation II of 1826.

§ 163.—No effectual progress was, however, made in carrying out the inquiries contemplated by Regulation VII of 1822; and when Lord William Bentinck arrived in Calcutta, and assumed the office of Governor-General (4th July 1828),

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declared to be in full force the rule that, at the expiration of 1222, a permanent settlement would be concluded for such lands as might be in a sufficiently improved state of cultivation to warrant the measure. The Board of Revenue were directed by section 5 (see *supra*) to submit the necessary report. A further change was made by Regulation I of 1813, which directed a settlement for one year (1220), then a settlement for two years (1221-22), at the expiry of which the Board were to conform to the provisions of section 5, Regulation X of 1812. The Report of the Board as to what lands were and were not in a state of cultivation to warrant a permanent settlement was not, however, sent in; and Regulation III of 1815, reciting that unavoidable delay had occurred in providing for the revision of the settlement, continued the existing arrangement till the end of 1223. Regulation VI of 1816, reciting that the information acquired by Government respecting the limits and produce of estates was too imperfect to afford grounds for the adjustment of a perpetual assessment, declared that the existing settlement should remain in force for a further period of three years, *i.e.*, to the end of 1226. Disturbances, due in a great measure to the operation of the Sale Law, now took place, and a Special Commissioner was appointed by Regulation V of 1818, and was vested with the powers of the Board of Revenue as well as with judicial powers for the administration of civil and criminal justice. Regulation XIII of 1818 extended the settlement for a further period of three years, to the end of 1229, in order to "afford due time to the revenue officers to collect the materials necessary for the formation of a settlement on proper principles." The materials were not, however, collected, and clause 2, section 2, of Regulation VII of 1822, extended the settlement for five years to the end of 1234. Act VI of 1837 declared the then existing settlement in force until a new settlement should be completed and confirmed. The settlement so completed and confirmed. extended to the end of 1274. Before its expiry, Act X (B. C.) of 1867 was passed, which continued such settlement for a further period of *thirty years*, *i.e.*, to the end of 1304. The province of Cuttack (which includes the Districts of Cuttack, Puri and Balasore) has not therefore been as yet permanently settled, and is not likely to be so until the close of the present century.

[1]By section 2 of Regulation IX of 1824. The extension was to the end of 1237.

little or nothing had been done towards accomplishing the object with which this Regulation had been passed six years before. It was said that the successful working of the enactment would entail an amount of labour for which Collectors could not possibly find leisure amidst the press of other duties; and that the detailed inquiries[1] required by its provisions would take a century for their completion. There can be no doubt that the work set to be performed was wholly beyond the powers of the agency available for its performance; and the utter hopelessness of bringing any portion of it to a conclusion deterred even the most energetic from making a commencement. Lord William Bentinck applied himself to the subject, and, after mastering its details in personal consultation[2] with the Revenue officers, endeavoured to devise a remedy for the undoubted mischief caused by the doubt and uncertainty resulting from the non-fulfilment of promises so often repeated.

§ 164.—The remedy devised was twofold—to lessen the difficulty and detail of the inquiries to be made in order to settlement; and to increase the agency available for making these inquiries. This twofold remedy was incorporated in Regulation IX of 1833, section 2 of which repealed so much of Regulation VII of 1822 as prescribed that the amount of jama to be demanded from any mahal should be calculated on *an ascertainment of the quantity and value of actual produce, or on a comparison between the cost of production and value of produce.*[3] The repeal of this single provision removed an enormous amount of work not compensated by the satisfactory nature of the results obtainable therefrom. The

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[1]See *ante*, § 42.

[2]During a tour of the North-Western Provinces made some two years after his arrival.

[3]When the indgo planters of Nuddea and Jessore called the provisions of the Enhancement Law into active operation (see *ante*, § 63) it was attempted to calculate the margin for rent in this way, and the author amongst others made the experiment. The result in a large number of cases was identical. The native evidence on the one side went to show the most remarkable profits, while that on the other side (if believed) proved that the raiyats invariably cultivated at a loss. How persons without capital were able to meet this loss year after year was not very obvious, and did not apparently strike the witnesses or those who called them as requiring explanation. To draw an average between such opposite statements was a work which could only be done by guess, judicial determination finding no place for its operation.

third section gave an almost equal amount of instant relief by repealing so much of Regulation VII of 1822 as prescribed that the judicial investigation into and decision on questions of disputed private claims should be conducted simultaneously with the ascertainment of, and determination on, the amount of the Government demand. Settlement Officers were thus enabled to give their full time and attention to the assessment of the land revenue, leaving these questions of disputed right for subsequent decision.[1] The increase of agency available for settlement work was effected by creating the office of Deputy Collector, which was declared open to Natives of India of any class or religious persuasion.[2] Deputy Collectors were to be subordinate to the Collector under whom they might be placed, and were required to perform all duties assigned to them by that functionary, who was empowered to employ them in settlement duties, in the superintendence of the Government Khas Mahals, and generally in the transaction of any other part of the duties of a Collector.[3]

§ 165.—A practicable task being now presented to the Revenue Officers of Government as the result of these changes, settlement work was recommenced with fresh zeal, and made real progress under the auspices of Mr. Robert Bird. In order to avoid the injurious consequences of temporary settlements of short duration, and to allow ample time for the collection of full materials for future decision, it was now determined to make a settlement for a period of thirty years. The assessment of the North-Western Provinces was completed in about ten years. The settlement of the districts having, however, been made for different periods, and the duration of the settlement, as stated in the engagements of the Malguzars, not always agreeing with that sanctioned by Government, Act VIII of 1846 was passed to avoid the confusion and

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[1]It will be remembered that the old settlements so often renewed were now on the point of expiring; and the work of re-assessment was therefore most urgent.

[2] It has been usual to consider Lord William Bentinck as the inaugurator of the introduction of natives to honourable employment in the public service. It is proper, however, to bear in mind that natives had been employed for many years before this in the Subordinate Judicial Service,

[3]Sections 20, 21 of Regulation IX of 1833—see these and the remaining sections.

litigation which might in consequence arise, and also to provide for the continuance of the then existing settlements until a fresh revision should take place.[1] The first section of this Act fixed the jama of each district up to and until a certain date specified therein. The first settlement to expire, according to these provisions, was that of Saharanpore, which was fixed up to the 1st July 1857. The last to expire was that of Banda, which was fixed up to the 1st July 1874. The settlements of the remaining districts were fixed up to dates falling within the intermediate years. Section 5 of the Act provided for the payment of the same jama after those dates from year to year until a revision.

§ 166.—It thus happened that the settlements of the districts of the North-Western Provinces began to fall in for revision at the period of an important political crisis in the history of the country—namely, the period of the Mutiny and the subsequent transfer of the Government from the Company to the Crown. After the suppression of the Mutiny and the restoration of order, the subject of the Permanent Settlement of the land revenue of India was considered by Her Majesty's Government, who came to the deliberate conclusion that a settlement in perpetuity in all districts in which the conditions absolutely required as preliminary to such a measure then were or might thereafter be fulfilled, was a measure dictated by sound policy and calculated to accelerate the development of the resources of India, and to ensure, in the highest degree, the welfare and contentment of all classes of Her Majesty's subjects in that country.[2] It was, accordingly, resolved to sanction a Permanent Settlement of

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[1] *Verbatim* from the Preamble to the Act 1.

[2] *Revenue Despatch No.* 14, *of* 9*th July* 1862, *published at page* 2889 *of the Calcutta Gazette of* 16*th August* 1862. The consideration of the question arose out of a Resolution of the Governor-General in Council regarding the sale of waste lands and the redemption of the land revenue thereupon. It is to be observed that the measure contemplated by the Home Government is more extensive than any scheme for a Permanent Settlement ever before entertained, seeing that the resolution was *to sanction a Permanent Settlement of the land revenue throughout India.* It was, indeed, considered that the Madras and Bombay Presidencies were not generally in a condition which would warrant a Permanent Settlement of the assessed lands at the then existing rates, but in both Presidencies it was intended to give the benefit of the measure to such districts as from time to time became fit for it.

the land revenue throughout India, to be introduced gradually into all districts or parts of districts in which no considerable

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This important despatch is too long to reproduce the whole of it here, but the following paragraphs will show some of the most important reasons taken into consideration by the Home Government :—

"The land revenue of India, as of all eastern countries, is less to be regarded as a tax on the land-owners than as the result of a kind of joint ownership in the soil or its produce, under which the latter is divided, in unequal and generally undefined proportions, between the ostensible proprietors and the State. It is not only just but necessary for the security of the land-owner that the respective shares in the produce should at any given period, or for specified terms, be strictly limited and defined. The increase of population, the improvement of communications, and the accumulation of wealth have a tendency to increase the extent of cultivation and the value of the net produce or rent, and the Government may rightly claim to participate in those advantages, which accrue from the general progress of society. This has hitherto been effected by means of periodical adjustments of the share, or at least of its value in money, which belongs to the State.

"By many persons great advantages have been anticipated from what is usually called a Permanent Settlement, that is, by the State fixing once and for ever the demand on the produce of the land, and foregoing all prospect of any future increase from that source. It has been urged that not only would a general feeling of contentment be diffused among the land-holders, but that they would thereby become attached, by the strongest ties of personal interest, to the Government by which that permanency is guaranteed. It is further alleged that by this means only can sufficient inducement be afforded to the proprietors to lay out capital on the land, and to introduce improvements by which the wealth and prosperity of the country would be increased . . . *Her Majesty's Government entertain no doubt of the political advantages which would attend a Permanent Settlement.* The security, and it may almost be said, the absolute creation of property in the soil which will flow from limitation in perpetuity of the demands of the State on the owners of land cannot fail to stimulate or confirm their sentiments of attachment and loyalty to the Government by whom so great a boon has been conceded, and on whose existence its permanency will depend . . . *It must also be remembered that all revisions of assessment, although occurring only at intervals of thirty years, nevertheless demand for a considerable time previous to their expiration,* much of the attention of the most experienced Civil Officers, whose services can be ill-spared from their regular administrative duties. Under the best arrangements the operation cannot fail to be harassing, vexatious, and perhaps, even oppressive to the people affected by it. The work can only be accomplished by the aid of large establishments or native ministerial officers, who must, of necessity, have great opportunities for peculation, extortion, and abuse of power. Moreover, as the period for re-settlement approaches, the agricultural classes, with the view of evading a true estimate of the actual value of their lands, contract their cultivation, cease to grow the most profitable crops, and allow wells and water-courses to fall into decay. These practices are certainly more detrimental to themselves than to the Government, but there can be no

increase was to be expected in the land revenue, and where its equitable apportionment had been or might thereafter be satisfactorily ascertained. It was pointed out that a full, fair and equable rent must first be imposed on all lands under temporary settlement, and that the preliminary step of a revision was necessary in order to ensure accurate results. The Government of India were at the same time reminded that whenever a Permanent Settlement was made directly with individuals or communities for estates in which other persons possessed subordinate rights and interests, these rights and interests should be guarded with the greatest care, so as to avoid the errors acknowledged to have been committed in respect to the Permanent Settlement of Bengal.

§ 167.—There was a general consensus of opinion that with one or two exceptions, the districts in the North-Western Provinces in whole or in part fulfilled the conditions entitling to a Permanent Settlement upon the principles laid down by the Home Government. It was determined, therefore, in accordance with the instructions given for carrying those

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question that they prevail extensively. The remedy for these evils, the needless occupation of the valuable time of the public officers employed in the revision, the extortion of the subordinate officials, and the loss of wealth to the community from the deterioration of cultivation, lies in a Permanent Settlement of the land revenue.

"The course of events which has been anticipated is, indeed, only that which has taken place in every civilized country. Experience shows that in their early stages nations derived almost the whole of their public resources in a direct manner from the produce of the soil, but that, as they grew in wealth and civilization, the basis of taxation, has been changed, and the revenue has been in a great degree derived indirectly by means of imposts on articles which the increasing means of the people consequent on a state of security and prosperity, have enabled them to consume in greater abundance. I am aware that it has been stated as an objection to promoting such a course of things in India that, in most European countries, the advantages of this change have been mainly appropriated by the large land-owners; but it must be remembered that in India, and especially in the districts under raiyatwari settlement, the great bulk of the agricultural population are the proprietors, subject only to the payment of the assessment of the lands which they till; and that, consequently, the benefit of a Permanent Settlement would be enjoyed, not by a narrow and limited class, but by the majority of the people.

"The apprehension of a possible fall in the relative value of money which has been previously noticed, though deserving consideration, does not seem to Her Majesty's Government to be of sufficient moment to influence their judgment to any material extent in disposing of this important question."

principles into effect, that, as the term of a thirty years' settlement in each district drew to a close, the opportunity should be taken of revising the assessment finally with a view to its being declared permanent for ever.[1] There were two classes of districts in respect of which no difficulty was felt by those charged with the duty of putting the broad rule in operation. Districts in which the estates were so fairly cultivated and their resources so fully developed as to warrant the immediate introduction of a Permanent Settlement were, as a matter of course, to be admitted to the benefit of the measure, which was, on the other hand, to be refused to districts in which agriculture was backward, population scanty, and rent not fully developed. There was, however, a third class whose condition was intermediate between these, consisting, that is, of districts in which a large number of estates were sufficiently cultivated to justify the introduction of a Permanent Settlement, but which at the same time contained also a considerable proportion of estates with resources imperfectly developed, and which could not therefore be permanently settled on their existing assets without entailing a prospective loss to the State.[2] A difficulty was felt as to the course to be pursued in dealing with this class.

§ 168.—It was proposed by the Governor-General to pave the way for the introduction of a Permanent Settlement of such districts by fixing at the time of making a thirty years' settlement, *firstly*, the amount of assessment payable during such settlement ; and, *secondly*, a further sum calculated upon a supposed development of resources which, if the proprietor were willing, he might, at the expiry of the thirty years' settlement, accept as the maximum amount demandable by the Government. Her Majesty's Government, remarking[3] that this proposal, while it failed altogether to bind the landholder, imposed a distant and possibly an inconvenient and improvident obligation on the State, were not, however, prepared to give their sanction to any settlement in perpetuity which was based not on the existing assets of the estates to which it is to be applied, but on a prospective estimate of

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[1] *Minute of the Governor-General, dated 5th March* 1864, *para.* 10—*page* 431 *of the Supplement to the Gazette of India of October* 13*th*, 1866.

[2] *Despatch No.* 11 *of* 24*th March* 1865, *and other papers published*, pp. 431—460 *of the Supplement to the Gazette of India of* 13*th October* 1866.

[3] *Despatch No.* 11, *of* 24*th March* 1865, *idem.*

their future capabilities. They declared their readiness to authorize an immediate settlement in perpetuity, after revision for all estates in which the actual cultivation amounted to 80 per cent. of the cultivable area; but they directed that all other estates, in which the cultivation is so backward, and the future development of their resources so uncertain that they are unfitted for a settlement in perpetuity, shall be treated in the ordinary manner and settled for a term not exceeding thirty years, no expectation being held out and no pledge being given to the proprietors in respect to the course which, at the expiration of that term, it may appear expedient to the Government of the day to pursue in dealing with their properties. It was further intimated that where no pledge had been given or any expectation held out of a settlement for so long a period as thirty years, it might probably be expedient to limit its duration to a period of fifteen or twenty years, at the expiration of which term cultivation might have so far advanced as to bring the estates within the conditions which would entitle them to a settlement in perpetuity.[1]

§ 169.—In a subsequent Despatch[2] the rule thus laid down was repeated in the form of a limitation, namely, that no

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[1]The result of the instructions contained in this Despatch is, that the Permanent Settlement of a *District* is not delayed until *all the estates therein* have come up to the required standard; but the fitness of each *estate* is estimated separately. Some of the estates in a district may therefore be permanently settled, while others are not. In this Despatch the Home Government also approved of a proposal to reserve in making a perpetual settlement a right to claim as revenue a share of the produce of *mines*.

[2]Of 23rd March 1867. In the same Despatch there is the following passage which indicates a certain change in the opinion of the Home Government as to the expediency of a Permanent Settlement:—"In consenting to a Permanent Settlement of the land revenue at the present time, Her Majesty's Government are advisedly making a great financial sacrifice in favour of the proprietors of land. They are giving up the prospect of a large future revenue, which might have been made available for the promotion of objects of general utility, and might have rendered it possible to dispense with other forms of taxation. This sacrifice they are prepared to make in consideration of the great importance of connecting the interests of the proprietors of the land with the stability of the British Government. It is right, however, that I should point out that the advantages now conferred upon the landholders are far greater than those contemplated in former times, and especially that they are quite beyond the scope of the expectations held out when Lord Cornwallis left rather less than one-tenth of the rental to the zemindar. The present assessment will leave him half; and, in addition to this, one-fifth of the cultivable land, if at present

estate shall be permanently settled in which the actual cultivation amounts to less than 80 per cent. of the cultivable area; and a further limitation was added, namely, that no Permanent Settlement shall be concluded for any estate to which canal irrigation is, in the opinion of the Governor-General in Council, likely to be extended within the next twenty years, and the existing assets of which would thereby be increased in the proportion of twenty per cent. Subject to these two limitations, the orders for a Permanent Settlement remained unaltered. Within the next four years, however, the Government had the weightiest reasons for doubting the sufficiency of these limitations, and the whole question of the wisdom and expediency of such a measure was again brought under discussion.

§ 170.—The Settlement Officer, who was charged with the assessment of Pargana Baghput in Zillah Mirat, came to the conclusion that Rs. 2,45,000 would be a fair assessment, regard being had to the great improvement in agriculture. The then existing assessment was only Rs. 1,48,000. It would have been altogether out of the question to raise the revenue from the amount to Rs. 2,45,000 *per saltum*. The Settlement Officer was of opinion that Rs. 2,10,000 would be as high as it would be safe to raise it in the first instance without risk to the well-being of the proprietors and prosperity of the property. The impossibility of at once fixing the assessment at Rs. 2,45,000 was due to two causes, as to which there was neither doubt nor dispute. The first of these was the general principle long admitted in practice, that too sudden a rise is likely to involve, if not ruin, the proprietors, sufficient time not being allowed them to adjust their circumstances to their diminished profits.

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uncultivated, is to be allowed to remain free of assessment for ever. Moreover, this settlement, instead of being granted (as was the case in Bengal and Bahár) at a time of extreme depression and impoverishment, is granted at a time of unparalleled hopefulness for all kinds of industry in India, when the demand for every kind of produce is rapidly increasing and the price rising, and when railways and other forms of enterprise are beginning to develop the vast resources of the country and to add to the wealth of all classes, and most especially to that of those connected with the land. Under these circumstances, it does not appear to be either necessary or reasonable that the Government, as trustees for the whole body of the people, should confer upon the land-holder, in addition to the other benefits which I have pointed out, the whole of the great increase in the value of his land which will certainly result from the extension of irrigation without making any reservation on behalf of the public interest."

The second cause was that *rents had not risen in proportion to the improvement* of the Pargana. The two conditions precedent to a Permanent Settlement prescribed in the Despatch of 1867 were fulfilled, yet if a Permanent Settlement were made at the possible assessment of Rs. 2,10,000, there would be a loss for ever of Rs. 35,000 a year to Government.[1]

§ 171.—Similarly, upon the revision of the assessment of the Bulandshahar District, it appeared that if a Permanent Settlement were made at the amount of revenue which it was possible for the proprietors to pay, having regard to the rents which they received from their tenants, Government would have to relinquish an increase of fourteen per cent. upon that assessment. The fact was that the share of the cultivator, according to the usage of the district at the time of settlement, was too large, and the share of the proprietor (*i.e.*, the rent) too low. An upward movement of rent had, however, begun. The proprietors emancipated from the conservative influence of rent in kind, were endeavouring to push their standard of rent as high as the tenantry would bear it.[2] Until this movement had been completely carried out, an assessment fair to Government could not be imposed upon the proprietors, and a Permanent Settlement at any lower assessment would be an inexpedient relinquishment of what ought to come into the coffers of the State.

§ 172.—The Lieutenant-Governor of the North-Western Provinces, in asking the sanction of the Supreme Government to a deferment of a Permanent Settlement, observed that the sacrifice of revenue, which would be the consequence of immediately carrying out this measure would be gratuitous and indefensible, for the increase of income to the proprietor would not represent the profit of capital invested on the faith of such settlement, but the mere assertion by the proprietor of a larger and more legitimate share in already existing assets. He considered that the sacrifice to which Government had

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[1]See *Minute of the Lieutenant-Governor of the North-Western Provinces, p. 4 of Extra Supplement to the Gazette of India of 3rd October* 1871.

[2]The Government did not claim to share in any further enhancement due to improvement from expenditure of labour and capital or rise in price. See *Minute of the Lieutenant-Governor, p.* 19, *Extra Supplement to the Gazette of India of 3rd October* 1871.

consented in conceding a Permanent Settlement was a sacrifice of future revenue from improvements accelerated by the increased investment of capital by proprietors, when secure of the whole result:[1] but that in the case of a settlement based on an imperfectly developed rental, the sacrifice would be of future revenue, created by no such expenditure, but simply by the exertion of proprietary power in increasing the relative share of the produce which constitutes rent. This being a process which, in the nature of things, would come to pass[2] equally whether the settlement were in perpetuity or for a term, the sacrifice would consequently be gratuitous, made without any corresponding object of return.

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[1]In so far as the increase would be due to the investment of capital it might be argued that there was no sacrifice, as Government could fairly claim no part of such increase. The experience of Bengal has shown the improbability of capital being invested even when the proprietors are secure of the whole result.

[2]With the greatest respect for the opinions of the able author of the Minute from which the above is quoted, I doubt the full inference to which the assumption here contained would lead, *viz.*, that proprietary power would or could be successfully exerted under the laws we have made so as to enhance the rent, *i.e.*, increase the proprietor's share up to the full limit which these laws allow. It has not yet been done in Bengal (see *ante*, §§ 63-64), and there seem to be additional difficulties in the way of doing it in the North-Western Provinces. Mr. Auckland Colvin, in his *Memorandum on the Revision of Land Revenue Settlement in the North-Western Provinces*, says :—"There are villages here within sixteen miles of the table at which I am writing, where it is as much as the auction-purchaser's life is worth to show his face unattended by a rabble of cudgellers. He may sue his tenants and obtain decrees ; but payment of those rents he will not get. A long series of struggles, commencing in our Courts, marked in their progress certainly by affrays, and very probably ending in murder, may possibly lead him at length to the position of an English ("Irish?") proprietor. But in defence of their old rates, the Brahmin or Rajpút or Syud community, as the case may be, ignorant of political economy, and mindful only of the traditions which record the origin and terms of their holding, will risk property and life itself." In a note he mentions the case of a village in Shahjahanpore sold for arrears of revenue and purchased by a Bunia, who was soon glad to dispose of it to a Mahomadan Vakil, under whose *regime* the tenants, many of whom had been the worst possible characters, became comparatively reformed, but still *objected decidedly either to pay full rates, or allow other tenants to take their land.* The Assistant Settlement Officer, who reported the case adds : "I believe the zemindár's agent is most careful never to remain in the village after dark." This is a germ of the state of things which came to pass in Ireland. One or two instances of violent resistance, inaugurated by the "worst possible characters" may create a precedent which others, whose antecedants

§ 173.—Under these circumstances, it was suggested that a third condition for Permanent Settlement was shown to be necessary, namely, evidence that the standard of rent prevalent, or the estimate of "net produce" on which the assessments are based, is adequate ; or, having due regard to soil facilities of irrigation and ratio of dry and wet land, is not below the level of rent throughout the country at large. The adoption of this suggestion would, in all probability, it was intimated necessitate a re-consideration of the fitness for Permanent Settlement of estates, which had been reported fit, as fulfilling the two conditions prescribed in the Despatch of 1867.[1] The Government of India, while admitting as indisputably correct the conclusion that the existing conditions for a Permanent Settlement were insufficient, were not, however, prepared to agree that the third condition above suggested would supply the insufficiency of the former rules. The Lieutenant-Governor of the North-Western Provinces, appeared to assume that the share of the actual cultivator was larger than it ought to be. Until the excess enjoyed by the cultivator without right was transferred to the proprietor, the Government could not obtain the full revenue to which it was supposed to be entitled. Now, as the Government revenue is only fifty per cent. of the rent, it followed that to make up every rupee of which that revenue fell short, the cultivator would be forced to pay two rupees to the landlord. The remedy which would raise the Government revenue to its legitimate amount by first giving the proprietor a fully developed rental, could hardly be fully applied unless it were admitted that it was desirable in the interest of the State and of the public that tenants should pay generally the highest possible

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are not equally bad, will however, follow under the influence of similar exciting causes. The auction-purchaser is generally the very man who has the means at his disposal to work the law. What does his failure indicate !

In making the above remarks, I fully bear in mind that there is a certain amount of increase within the power of the proprietor, and to which tenants will submit : and that this increase is always held in abeyance, when assessment proceedings are pending, and until they have been concluded, when the proprietor, having escaped the increase of revenue which would have been imposed on an increased rental, proceeds to enjoy the benefit without the burden.

[1]A reference to the numerous papers published in the *Extra Supplement to the Gazette of India of October 3rd*, 1871, will show that there were other parts of the country in which a state of things prevailed similar to that in the Búlandshahar District.

rents, that the restrictions placed by law or custom on the power of a landlord to increase his rents should be done away with, and that rights of occupancy should cease. This was a solution not to be accepted; but the fact that this was the only way out of the difficulty appeared to indicate something faulty in the system of assessment.

§ 174.—The whole question of the Permanent Settlement being re-opened, it became necessary, in the opinion of the Government of India, to consider whether the experience, gained since the orders of 1867 were passed, showed that the conditions thereby prescribed required amendment in other respects than those noticed by the Lieutenant-Governor: and this question must, the Governor-General in Council considered, be answered in the affirmative. In prescribing the existing conditions for Permanent Settlement, it appeared to have been the intention of Her Majesty's Government to affirm two principles. The *first* was that the State ought not to demand a share of that increase in the profits of the land, which is the result of the application of the capital and exertions of the occupant.[1] The *second* was that it was not right that the State should sacrifice that share of the increased profits of the land which would almost certainly, within a period which could be easily foreseen, result from the application to the land, not of the skill and capital of the occupant, but of the skill and capital of the State itself. This latter principle had been admitted in the case of increase of value resulting from the construction of canals. There was no reason why it should not apply also to cases of construction of railways or other public works, or to other causes independent of the action of the occupant of the land. Great as the additional value given to the land by works of irrigation undoubtedly was, it was hardly greater or more certain than that which was given by railways and canals of navigation, and by the opening out of new and profitable markets. When the question of the Permanent Settlement was formerly under discussion, the magnitude of the economical revolution through which India is passing was less

[1] "This principle was expressly followed in section 30 of Act I (B.C.) of 1865: and it lies at the foundation of the Landlords' Enhancement Law, one of the grounds of enhancement being that the value of the produce or the productive powers of the land have been increased *otherwise than by the agency or at the expense* of the rayat."

obvious than it had since become. It might be doubted whether any parallel could be found in any country in the world to the changes which had taken place during the preceding ten or fifteen years in India, to the diminution in the value of the precious metals and the enormous increase in the prices of agricultural produce.

§ 175.—It had been suggested at various times and by various authorities, that the settlement of the land revenue should be made, not upon the basis of a fixed money assessment, but on the basis of the value of a fixed quantity of produce, which value would be adjusted, from time to time, according to the average prices which prevailed. A Permanent Settlement on this basis, it had been urged, might be allowed without any serious sacrifice of future interest, and the result would be in a great measure that which it had long been the desire of the Government to obtain—a system under which improvements made at the expense of the occupant of the land should lead to no increase in the demands of the State on account of its share of the produce ; while, on the other hand, the State would not lose the whole of the benefit derived by the land from improved administration, from the construction of great public works, and from the general progress of the country. The Governor-General in Council did not wish to give any definite opinion on the subject, but it was one which was open to discussion.[1]

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[1]Settlement on the basis of the value of a fixed quantity of produce was the principle of Todar Mal's system, under which, before it was overlaid with the abwábs and exactions of the Mahomadan officials, the cultivators are reported to have been prosperous and contented. Todar Mal's settlement was made with the actual cultivators (see *ante*, § 67), while under our system the settlement is with rent-receivers. Restrained by good government and not impelled by the demands of the State (or of its officials, *participes criminis*) to exact or rack-rent, *they* would, however, be unable to repeat the history of past times. Amongst the documents sent home to the Secretary of State with the papers already above referred to, where two Minutes, one by the Governor-General, and the other by the Hon'ble J. Strachey (now Lieutenant-Governor of the North-Western Provinces), in which was discussed the question of Permanent Settlement on the basis of the value of a fixed quantity of produce, such value to be adjusted from time to time according to prevailing average prices. "I have long believed," writes Mr. Strachey, "that if a Permanent Settlement can rightly be made at all, some such principle as this is the only one on which it could reasonably be based. It is, in fact, the only principle on which a Permanent Settlement which deserves the name is possible, for there is nothing really permanent in

§ 176.—Finally the Government of India came to the conclusion that it had been proved by experience that the existing

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an assessment fixed in money, the value of which goes on steadily diminishing or changing." He then gives a summary of some of the discussions which have taken place on the subject, and quotes from Mr. (now Sir) George Campbell's *Note on the Permanent Settlement of the Land Revenue*, who refers to the commutation of tithes in England and of tithes and rents in Scotland as instances of the application of a principle by which a charge in one sense absolutely fixed, while it is liable to periodical re-adjustment with reference to the changes in the relative value of money and the chief staples of production. This principle will be readily understood from the rule for the conversion of tithes under *The Tithe Commutation Acts* (6 and 7 Will. IV, Cap. 71, amended by 23 and 24 Vic., Cap. 93, and other statutes) :—(1) Find the gross average money value of the tithe of a parish or district for seven years ending Christmas, 1835. (2) Apportion the amount of that value upon the lands of the several title-payers. (3) Ascertain how much corn could be purchased with such amount; one-third of it to be laid out in *wheat*, one-third in *barley* and one-third in *oats*, at the average price ascertained by the weekly official returns of the price of corn for the seven years preceding Christmas, 1835. (4) *In every future year, make payable the price of the same quantity of wheat, barley, and oats at their average prices founded on a like calculation of the official returns for the seven years ending at each preceding Christmas.* These official returns are published in the *London Gazette* in January of every year, and state the average price of wheat, barley, and oats for the seven years ending on Thursday before Christmas then next preceding.

Now to show at once how this rule would be applied to a settlement of the land revenue in India, let us take one staple (instead of three and in order to simplify the matter), *viz.*, paddy ; let us suppose that, at the time of settlement, the price of paddy was one rupee per maund, and that the assessment of an estate, instead of being fixed at Rs. 1,000 were fixed at 1,000 maunds of paddy. Let us now suppose the price of paddy to rise as a consequence of progress, improved markets, &c., and that the average price of paddy during a subsequent period of seven years (or any other period selected as the standard period of revision) came to be one rupee four annas per maund. The State would get the price of 1,000 maunds, but this price would now be Rs. 1,259 instead of Rs. 1,000. The student of Political Economy knows that this is merely a practical application of the theory of value, corn or paddy being taken as the measure of value instead of money. Owing to an increase in the quantity of the precious metals and to other causes, the relative value of money as compared with the value of other things has fallen. Owing to increased demand and other causes, the relative value of corn, paddy, has risen. If the State had originally contracted for payment in corn commutable to its equivalent in money, the State would have gained in two ways; *1st*, by the increased relative value of corn : *2nd*, by the diminished relative value of money. Having contracted for payment in money, it has lost in these two ways. Those who think that a Permanent Settlement, on the basis of the value of a fixed quantity of produce adjustable from time to time would prove successful as a means of giving the State a share in that improvement, in the value of the land

conditions regarding Permanent Settlements in the North-Western Provinces were insufficient, and that those conditions could not be applied without most serious and certain injury to the future interests of the public. The Governor-General in Council, therefore, requested the Lieutenant-Governor to reconsider the great question of the Permanent Settlement of the North-Western Provinces, and, meanwhile, the whole correspondence was placed before the Secretary of State, with a recommendation that, pending the further discussion of the entire subject, the orders contained in the Despatch of the 23rd March 1867 should be held in abeyance. By a Despatch[1] of the 21st July 1871, this recommendation was approved and the Government of India were authorized at once to suspend all proceedings towards the permanent settlement of any district until the results of the reconsideration in all its

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which is due to causes of a general character, assume tacitly that the relative value of produce will continue to increase. No doubt the tendency is that it should increase in the progress of improvement. But during the last few years, there has been in India a very extraordinary increase of the relative value of produce and an equally extraordinary decrease of the relative value of money. There may, probably will, be a re-action ; and, if produce at its present high price were taken as the measure of value instead of money, the Government might again be a loser instead of a gainer. I do not say that this would be so. I merely say that the contingency should not be forgotten. The object of the Tithe Commutation Acts, it may be well to remember, was to prevent disputes and litigation by the adoption of a fixed principle of commutation. To share in the improvement in the value of land was not the main object proposed, though it has so happened that this has been the result. The proposed principle should strongly recommend itself to proprietors desirous of investing capital in the improvement of their lands. Of the increased produce which will be the result, Government will get no share, the permanent assessment being 1,000 maunds whether the total produce be more or less ; but the increased produce being thrown into the market will increase the supply and therefore reduce the money value. As the proprietor is to pay the money value of the paddy, he will therefore have less to pay. Not only then will he receive the whole increase resulting from his capital, but the investment of such capital will diminish his former payment. It may be remarked that the difference between the proposed principle and Todar Mal's decennial revision is, that Todar Mal did not absolutely fix for ever the quantity of produce: he fixed merely the quantity relatively, relative that is, to the total quantity and varying therewith from year to year. He therefore took a share of the result of all improvements to whatever causes they were due.

[1]No. 20—See *page* 161 *of the Extra Supplement to the Gazette of India for* 3*rd October* 1871.

bearings of this momentous question were laid before the Home Government.[1]

§ 177.—I now turn to the mode of realizing the land revenue in the North-Western Provinces, the law on which subject has been consolidated and amended in Chapter V of "The North-Western Provinces Land Revenue Act," XIX of 1873. A "mahal" is any local area held under a separate engagement for the payment of the land revenue, and for which a separate record of rights has been framed.[2] The entire mahal and all the proprietors jointly and severally are responsible to Government for the revenue for the time being assessed on the mahal.[3] An arrear of revenue may be recovered by the following processes, *viz.*:—

I.—By serving a writ of demand (*dustak*) on any of the defaulters ;

II.—By arrest and detention of his person ;

III.—By distress and sale of his moveable property ;

IV.—By attachment of the share, or *patti* or *mahal* in respect of which the area is due ,

V.—By transfer of such share or *patti* to a solvent co-sharer in the *mahal* ;

VI.—By annulment of the settlement of such *patti* or of the whole *mahal* ;

VII.—By sale of such *patti* or of the whole *mahal* ;

VIII.—By sale of other immoveable property of the defaulter.[4]

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[1]The Despatch No. 11 of 24th March 1865 of the Secretary of State having been forwarded to the Government of the Punjáb for consideration, that Government was of opinion that any attempt to fix permanently the Government demand for land revenue would be altogether premature, the province being in a state of agricultural infancy. Of an area of upwards of 100,000 square miles, only 31,513 square miles were (1870) cultivated, and only one-fourth of this cultivated area was irrigated. Sir Donald McLeod, the late Lieutenant-Governor, was of opinion that it would be suicidal to declare permanent the *money* assessment, as the purchasing power of money would, he believed, be less than half in another fifty years. If, however, permanency must be carried into effect, he would make corn the standard. Having regard to the peculiarities of the country with reference to capabilities for irrigation and distribution of population—to the extreme fluctuation of the prices of agricultural produce—and to the absence of any desire on the part of the population for a permanent settlement, Mr. Egerton, the Financial Commissioner, did not consider such a measure advisable.

[2]Section 3.

[3]Section 146.

[4]Section 150. The difference between these provisions and those in force in Bengal (*ante*, p. 76 *et seq.*) will not escape notice.

§ 178.—Writs of demand may be issued on or after the day following that on which the arrear falls due.[1] At any time after an arrear becomes due, the defaulter may be arrested and detained in custody for fifteen days.[2] Whether he has been arrested or not his moveable property may be distrained and sold, with the exception of implements of husbandry and cattle actually employed by him in agriculture, and, in the case of an artizan, of his tools.[3] In addition to, or instead of, any of these processes, the Collector may cause the share or *patti* or *mahal*, in respect of which the arrear is due, to be attached and taken under the management of himself or of an agent appointed for that purpose.[4] The Collector or such agent is bound by all engagements with subordinate proprietors or tenants.[5] Surplus profits, after defraying the cost of attachment and management, are to be applied to defray the arrear.[6] No land is to be attached for a longer period than five years. When the arrear is due in respect of a share or *patti* in a *mahal*, the Collector may, with the previous sanction of the Board, transfer such share or *patti* for a term not exceeding fifteen years to any or all of the other co-sharers, on condition of their paying such arrear and on such terms as the Board in each case may think fit.[7] When the above processes are not sufficient, in the opinion of the Collector, for the recovery of the arrear, he may report to the Board, who may order the settlement to be annulled. This is not, however, to be done while an attachment is in force, or while the property is under the charge of the Court of Wards.[8] When a settlement is annulled the Collector may manage the land himself, or by an agent or farmer : but the contracts of the defaulter are not binding on any of them.[9] When a settlement of a portion of a mahal is annulled, the joint responsibility of the co-sharers is in abeyance until a new settlement is made.[10]

§ 179.—When an arrear of land revenue has become due, and the Collector is of opinion that the preceding processes are not sufficient for the recovery thereof, he may, in addition to, or instead of, all or any of such processes and *with the previous sanction of the Board*, sell by auction the *patti* or

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[1]Section 151.
[2]Section 152.
[3]Section 153.
[4]Section 154.
[5]Section 155.
[6]Section 156.
[7]Section 157.
[8]Section 185.
[9]Section 159.
[10]Section 164.

mahal in respect of which such arrear is due. No sale is, however, to be made (1) for an arrear which accrued while the property was or might have been under the jurisdiction of the Court of Wards ; (2) or which accrued while the property was under attachment as above for arrears ; (3) or which accrued while it was under direct management by the Collector, or in farm on account of the exclusion of persons declining or failing to accept settlement, or in the annulment of a settlement as above.[1] The land is sold free of all incumbrances, and all grants become void, except the following :—(1) in permanently settled estates, forms granted in good faith at fair rents and for specified areas for terms not exceeding twenty years, under written leases duly registered ; (2) in all estates, lands held under *bonâ fide* leases at fair rents, temporary or perpetual, for the erection of dwelling-houses or manufactories, or for mines, gardens, tanks, canals, places of worship, or burying-grounds, such lands continuing to be used for the purposes specified in such leases.[2] When the arrear cannot be recovered by other processes, including sale of the mahal upon which the arrear accrued, the Collector may proceed to sell any other mahal or share in a mahal or other immoveable property belonging to the defaulter ; but a sale does not in this case avoid incumbrances created, or contracts entered into, by the defaulter in good faith.[3]

§ 180.—Whenever proceedings are taken against any person for the recovery of any arrear of revenue, he may pay the

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[1]Section 166.

[2]Section 167.

[3]Section 168. Sections 169—188 contain the rules for conducting sales which are generally similar to those in Bengal (*ante*, p. 89). There are, however, one or two points which may be noticed. In the case of default in paying the purchase-money and of consequent re-sale, any resulting loss is leviable under the rules in the Code of Civil Procedure for enforcing payment of money in satisfaction of a decree (s. 176). The purchaser is liable for all revenue accruing subsequent to the date of confirmation of the sale (s. 187). When the land sold is a *patti* of a mahal, any recorded co-sharer, not being himself in arrear, has a right of pre-emption at the sum last bid, but the demand to exercise such right must be made on the day of sale (s. 188). When a mahal or a portion of a mahal is sold, a proprietor who holds *sir* land therein, is to be recorded as an ex-proprietary tenant of such *sir* land, and the rent to be paid by him is to be fixed by the Collector or Assistant Collector (s. 190).

amount claimed under protest to the officer taking such proceedings, which shall thereupon be stayed, and may sue the Government in the Civil Court for the amount so paid. In such a suit, he may contest the accuracy of the statement of account put forward by the Revenue Authorities.[1] With this exception, however, the jurisdiction of the Civil Court is strictly barred in respect of all claims connected with or arising out of the collection of revenue or any process enforced on account of an arrear of revenue, or on account of any sum which is realizable as revenue.[2]

§ 181.—It will be evident from the above that the law for the realization of the land revenue in the North-Western Provinces differs materially from that in force in Bengal. In no respect is this difference more striking than in this, that a sale is the first process resorted to in Bengal, while in the North-Western Provinces it is the last, recourse being had thereto only when there is no probability of the arrear being realized by the other processes provided by the law. Sales for arrears of revenue have at no time been in favour with the Revenue Authorities of the North-Western Provinces, and the question of putting a stop to such sales altogether has more than once engaged the attention of the Government. The policy of allowing the old families to be ousted and replaced by successful vakils, money-lenders, and corn-dealers has been seriously doubted. Sales are not, however, of very frequent occurrence, and in some years there have been none.[3] A certain amount the aversion to sales is perhaps to be found in the past history of the revenue administration of this part of the country.

§ 182.—When the Regulations passed for Bengal, Bahár, and Orissa were extended *en masse* to the Ceded and Conquered Provinces[4] without regard to the errors embodied in them, or the differing circumstances of the new provinces, the Sale Law of Bengal as part of the system was introduced in its integrity; and it was for a long time understood and acted upon, that the whole estate, and not merely the interest of the defaulter,

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[1]Section 189.

[2]Section 241, clauses (*i*) and (*j*).

[3]*e.g.*, in 1871, see *Revenue Administration Report*, p. 57.

[4]See *ante*, § 155.

was transferred by the sale.[1] Collectors, for the purpose of simplifying and facilitating official business, had insisted on the settlement being made with one, where many were interested. Occasionally, the persons with whom the settlement was made were those who possessed the least interest in the property. A sale thus often involved the confiscation of the rights of persons who were in no default and had no means of protecting themselves. The native officers of Government, their relations, connections, and dependents, taking advantage of manifest errors in our procedure and magnifying their results by chicanery and fraud, managed to purchase valuable estates for a mere trifle.[2] The immediate effect of all this was, in the language of Mr. Holt Mackenzie, to disjoint the whole frame of the village societies, to deprive multitudes of rights and property which their families had held for ages, and to reduce a high-spirited class of men from the pride of independence to the situation of labourers on their paternal fields.

§ 183.—These mischiefs at length reached such a height that the public tranquility was in danger; and a special Commission was created by Regulation I of 1821 for the investigation and decision of claims to recover possession of land illegally or wrongfully disposed of by public sale or lost through private transfers effected by undue influence. The

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[1]See *Mr. Holt Mackenzie's Minute of* 1*st July* 1819, §§ 531—587 and *the Earl of Moira's Minute of* 21*st September* 1815, §§ 108—110, and 134—135.

[2]A vivid description of the practices resorted to and the result of them will be found in the Preamble to Regulation I of 1821. The state of things in Allahabad was thus described by the Board in 1811: "The numerous transfers by public and private sale, which in some parganas amount nearly to a total permutation of property, have not tended, from their following so immediately upon the introduction of the British Government, to render that Government popular; and as the purchasers in almost all the public sales are the actual Tehsildars, or the sureties for the nominal Tehsildars, the credit of Government is to no small degree affected from these persons having been permitted thus to pervert the influence derived to them by their connection with the public service." Mr. Holt Mackenzie thinks it clear that sale for arrears has been felt by the people as *an evil greater than the rigor of former Governments*. The result of the operation of the Sale Law in Bengal has been already described.—See *ante*, pp. 83 *note*, 85 *note* and 94 *note*.

Regulation contained rules for the proceedings of the Commissioners, and prescribed the principles upon which relief was to be afforded. Much mischief was corrected, and many persons were reinstated in their rights by the labours of this Commission; but in many cases the remedy came too late to repair the evil; and where the auction-purchaser had been misled by the law or by the action of Government itself, the work of restoring the former proprietor to the position occupied by him was beset with many difficulties, some of which were more or less insuperable.

§ 184.—We have seen that a Board of Commissioners was established in the Ceded and Conquered Provinces by Regulation X of 1807, and was made permanent by Regulation I of 1809. In 1816 a separate Commissioner was appointed, by Regulation I of that year, for the superintendence of the revenues of the province of Benares and that part of the province of Bahár comprised in the zillahs of Bahár, Shahabad, Sarun and Tirhút. This Commissioner was invested with the full authority of the Board. By Regulation I of 1817 his jurisdiction was extended to the districts of Ramghur, Bhaugulpore and Purneah. By Regulation XXIV of the same year, the duties, powers, and authority exercised by this Commissioner were vested in a Board, to consist ordinarily of two members and to be denominated *The Board of Commissioners in Bahár and Benares.* The superintencence of the revenues of the districts of Dinajpore and Rungpore was transferred by the same Regulation to this Board from the Board of Revenue in Calcutta, to which it was, however, restored by Regulation I of 1819. By this last-mentioned Regulation the district of Goruckpore was transferred from the jurisdiction of the Board of Commissioners in the Ceded and Conquered Provinces to that of the similar Board in Bahár and Benares.

§ 185.—Regulation III of 1822 enacted that there should be three Boards of Revenue for the Lower, Central and Western Provinces respectively. The districts of Bhaugulpore and Purneah were now transferred to the jurisdiction of *The Board of Revenue for the Lower Provinces.* Bundlekhund, Allahabad and Cawnpore were transferred to the jurisdiction of the Board of Commissioners in Bahár and Benares, who became *The Board of Revenue for the Central Provinces.* The Board of Commissioners for the Ceded and Conquered

Provinces retained their jurisdiction in the remaining districts of these provinces, and became *The Board of Revenue for the Western Provinces.* In 1829, Commissioners of Revenue and Circuit were created by Regulation I, and the powers and authority of the three Boards were transferred to these officers, to be exercised "subject to the control and direction of a Sadr or Head Board to be ordinarily stationed at the Presidency, unless otherwise directed by the Governor-General in Council, and to such restrictions and provisions as the Governor-General in Council or the said Sadr Board, with his authority or sanction, may prescribe." This is the real origin of the Board of Revenue now in existence at Calcutta.

§ 186.—The assessment operations, which subsequently terminated in the first thirty years' settlement of the North-Western Provinces, were soon found to require closer supervision than could be exercised from Calcutta; and accordingly in 1831 arrangements were made for deputing one or more members of the Sadr Board to be ordinarily stationed at Allahabad (Regulation X of 1831). The full powers of the Sadr Board were vested in these members on deputation who were to act independently of the Sadr Board, unless in the event of the number of members being reduced to one, or of a difference of opinion when two were present, in which cases any matter by law requiring the concurrence of two voices was to be referred for determination to the Sadr Board at the Presidency.[1] The members of the Sadr Board thus deputed became *The Board of Revenue of the North-Western Provinces*, the constitution and powers of which are now regulated by Chapter II of "*The North-Western Provinces Land Revenue Act*," XIX of 1873.

§ 187.—Provisions was made for ascertaining and collecting the land revenue of Calcutta by Act XXIII of 1850, by which all assessable lands, not the property of the East India Company within the town, were assessed at the rate of three annas for each *kattha*. The land revenue was declared to have priority over all other claims, and was made recoverable by distress and sale. Any amount paid by a tenant or occupier may be deducted from the next payment

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[1]The Sadr Board at the Presidency was to refer in similar cases to the members on deputation (s. 10).

of rent to the landlord. Lakhiraj tenures, of which uninterrupted possession had been held exempt from assessment for sixty years, were declared valid. All claims were to be enquired into by the Collector and reported to the Commisioner for orders. Ground-rents payable from lands in Calcutta were declared to be "*revenue*" within the meaning of the 21 Geo III, cap. 70, section 8 of which enacts that the Supreme Court "shall not have or exercise any jurisdiction in any matter concerning the revenue or concerning any act or acts ordered or done in the collection thereof, according to the usage and practice of the country or the Regulations of the Governor-General and Council."[1]

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[1]See *Spooner and another* v. *Jaddow*, IV Moo. Ind. Ap. 353, and *In the matter of Adhar Chandra Shah and others*, XI B. L. R. 250, in which an order of the Board of Revenue putting liquor licenses up to sale was held to fall withi n the Statute.

# CHAPTER IV.

## THE ADMINISTRATION OF JUSTICE.

§ 188.—According to Manu, the object of the institution of a King is to restrain violence and to pumish evil-doers, and he adds that, if a king were not to punish the guilty, the stronger would roast the weaker like fish on a spit, ownership would remain with none, the lowest would overset the highest. His Code directs that justice be administered by the King in person, assisted by Brahmins and other counsellors ; or the duty may be deputed to one Brahmin, assisted by three assessors of the same class. While society remained in the patriarchal stage, it may have been possible for the King to take a personal share in the administration of justice ; but when, in a later stage of development, the State assumed more extended proportions, and its members, increased in number, bore a more complex relation one to another, it naturally became inconvenient, if not impossible, for him to preside in person at the tribunal of justice. The delegation of this function no doubt commenced at places distant from the royal residence, and in such places the King's local representative performed this and all other functions as his deputy.[1] Accordingly we find that the Village Headman

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[1]Mr. Elphinstone, in the third chapter of his History of India, gives a good sketch of the administration of justice and the rules of civil and criminal law provided by the Code of Manu. Referring to *Çolebrooke on the Hindû Courts of Judicature, Transactions of the Royal Asiatic Society*, vol. ii, p. 166, he mentions in a note (p. 25) that there are authorities to show that there was a regular system of local Courts from which an appeal lay to the Chief Court at the capital, and from that to the King in his own Court, composed of a certain number of Judges, to whom were joined his ministers and his domestic chaplain, who was to direct his conscience ; but though these might advise, the decision rested with the King. Below the local Courts were arbitrators in three gradations : *first*, of kinsmen : *secondly*, of men of the same trade ; and *thirdly*, of townsmen. An appeal lay from the first to second ; from the second to the third,—from the third to the local Court. Under this system, there were no less than *five* appeals enough to make modern law reformers shudder. Decision by arbitration, generally of five (*panchayat*), was very common when other means of obtaining justice were not available. The native proverb, "The pancha is the supreme deity," goes to show the estimation in which this custom was held.

was the Judge and Magistrate of the Village Community; and inasmuch as he collected and transmitted the Government revenue, it may be said, according to the analogy of modern times, that he was also the Collector.

§ 189.—Under the Mahomadan Government justice was distributed by two distinct classes of tribunals, *viz.* (1) those of the Kazís, who administered the elaborate sytem of Mahomadan law; and (2) those of the officers of Government, whose authority was regulated by no fixed rules, but was generally exercised with a view to their own interest, more especially when the litigants were aliens in race and creed.[1] The King occasionally inquired into petitions; but the calls of war or the other cares of State or the pleasures of the harem left little leisure for taking any regular or systematic share in the administration of justice. In the provinces, or *Súbhas*, the same two classes of tribunals existed. When the *Kazí* was a man of celebrity and individual importance, his power and influence upon the distribution of justice were great in proportion: but it commonly happened that the Governors and their officers assumed the disposal of all the more important cases, while the *Kazí* became merely an officer for registering deeds and performing marriages.[2] The following are the judicial authorities[3] which we found in existence at Múrshedabád immediately after the grant of the Diwání:—I. *The Názím*, who, as Supreme Magistrate, presided personally at the trial of capital offenders. II. *The Díwán*, who was supposed to decide cases relating to real estate or property in land, but who seldom exercised this jurisdiction in person. III. *The Darogah-Adálat-al-Alica*, or Deputy of the Názím in the Criminal Court, who took

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[1]To compare one thing with another, the pure Mahomadan law administered by the Kazí was the *jus civile*. The King's officers, like the Roman Praetors, had to supplement this law for Hindús and others for whom it did not provide. The absence of system and the rapacity of the times prevented their *jus honorarium* from assuming either in form or substance anything like the shape of a new body of *æquitas*.

[2]The officers mentioned in the Ayín Akbarí as employed in the administration of justice and in police duties, are the Mír-í-âdl or Lord Justice, who seems to have been superior to the Kazí, whose judgments required his sanction: the *Faujdár* for keeping the peace and maintaining the police: and the *Kotwal* or Head Constable of the town. The *Faujdár* exercised jurisdiction in criminal cases.

[3]Letter from the Committee of Circuit at Kasim Bazar, dated 15th August 1772; *Colebrooke's Supplement*, p. 8.

cognizance of quarrels, frays and abuse, and also of all matters of property excepting claims of land and inheritance. IV. *The Darogah-i-Adalat-Díwaní*, or Deputy of the Díwán in the Civil Court. V. *The Faujdár*, or Officer of Police and judge of all crimes not capital. VI. *The Kazí*, who decided claims of inheritance or succession. VII. *The Muktasib*, who had cognizance of drunkenness, the vending of spirituous liquors and intoxicating drugs and the examination of false weights and measures. VIII. *The Mufti*, who expounded the law for the Kazí, who, if he agreed, decided accordingly. If he disagreed, a reference was made to the Názím, who called a Council of the jurisconsults. IX. *The kanúngoes*, or Registrars of the lands, to whom cases connected with land were occasionally referred for decision: and X. *The Kotwal*, or Peace-Officer of the night, subordinate to the *Faujdár*.

§ 190.—The operation of these Courts was confined to the circle round about Múrshedabád, and there were no proper arrangements for subordinate jurisdiction in the distant districts.[1] The *Kazí* indeed had his substitutes, but their power was exercised under no lawful and authoritative commission, and depended upon the pleasure of the people, or their ability to contest its exercise. The zemindárs, farmers, and other revenue officers accordingly assumed that power for which no provision was made by the laws of the land,[2] and they exercised it with a view, not to justice, but

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[1]None of these officers went on circuit as the Judges at Westminster began to do at an early period of our judiciary.

[2]Mr. Shore says that he cannot trace any delegation of power for the trial of delinquents and the infliction of punishment upon them If it ever was exercised, he thinks it must be considered either as an encroachment on the royal prerogative, or to have existed by sufferance. He remarks, however, that, for enforcing the payment of the rents, they certainly (if practice be deemed an authority) were allowed a power of coercion which was sometimes exercised with a cruelty disgraceful to humanity. No doubt, once the exercise of the power was allowed, no great distinction was made between the purposes for which it was exercised. Mr. Grant considered that a zemindar's sanad "conferred an inferior juridical authority similar to that of an English Justice of the Peace." They always exercised police jurisdiction, and were responsible for keeping the peace and for the arrest of robbers, &c. Zemindárs, talúkdárs, farmers, &c., were prohibited by section 66 of Regulation VIII of 1793 under penalty of *fine* from taking cognizance of or interfering in, matters or causes coming within the jurisdictions of the courts.

their own interests. The result of this state of things was thus described in the seventh Report of the Committee of Secrecy in 1773: "The subjects of the Mogul Empire derived little protection or security from any of these Courts; and in general, though forms of judicature were established and preserved, the despotic principles of the Government rendered them the instruments of power rather than of justice, not only unavailing to protect the people, but often the means of the most grevious oppressions under the cloak of the judicial character." The Committee further stated it to be the general opinion "that the administration of justice during the vigour of the ancient constitution was liable to great abuse and oppression; that the Judges generally lay under the influence of interest and often under that of corruption; and that the interposition of Government, from motives of favour and displeasure, was another frequent cause of the perversion of justice."[1]

§ 191.—Seven years after the acquisition of the Díwání, the Company's Government took the first step towards improving the administration of justice. Under the Regulations of the 15th August 1772 two Courts, a *Díwání* or Civil Court, and a *Fáujdári*[2] or Criminal Court, were instituted for each provincial division or collectorship as then constituted. The Collector on the part of the Company as Díwán presided over the *Díwání Adálat* or Civil Court, which had jurisdiction in all disputes concerning property real or personal, in all causes of inheritance, marriage, and caste, and all claims of debt, disputed accounts, contracts, partnerships, and demands of rent.[3] The *Kazí* and *Muftí* of the district and two Múlvís sat in the *Faujdári Adálat* or Criminal Court to

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[1]In a letter from the President and Council of Fort William, dated 3rd November 1772, it was stated that the regular course of justice was everywhere suspended; but every man exercised it who had the power of compelling others to submit to his decisions. Governor Verelst, in his instructions to the Supervisors in 1770 described every decision of the Mahomadan authorities as a corrupt bargain with the highest bidders. Speaking more especially of the Upper Provinces, the Earl of Moira wrote in 1815:—"The former system left entirely at the discretion of the Amils the lives and properties of all the population of their several jurisdictions. There was only an appeal to the immediate Sovereign of the State and he was generally inaccessible."

[2]Sometimes improperly *Faujdari*.

[3]The right of succession to *zemindáris* and *talúkdaris* was reserved for the decision of the President and Council.

expound the Mahomadan law and determine how far accused persons were guilty of its violation; but it was made the Collectors duty to see that the proceedings were regular and the decision fair and impartial.[1] An appeal lay from these Courts to the *Sádr Díwání Adálat* or Chief Civil Court, and to the *Nizámat Adálat* or Chief Criminal Court respectively.[1] The *Sádr Díwání Adálat* consisted of the President and Members of Council, assisted by the Native Officers of the Khalsa or Exchequer. The *Nizámat Adálat* consisted of a Chief Officer of Justice appointed on the part of the *Nawáb Názím*, and styled the *Darogah-i-Adálat*, the head *Kazí* and *Muftí* and three eminent Múlvís. It was their duty to revise the proceedings of the Faujdárí Adálat, and in capital cases prepare the sentence for the warrant of the Názím. Their proceedings were subject to the control of the President and Council, so as to ensure regularity and impartiality.[2]

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[1]In order to afford free and easy access to justice and redress, a *box* was to be placed at the door of the Kacharí or Court-house, in which complainants might lodge their petitions at any time or hour they pleased. The Collector was himself to keep the key of the box, and was to have it opened and the contents read in his presence on each Court-day. At the same time trivial and groundless complaints were to be punished with a fine not exceeding five rupees, or corporal punishment not exceeding twenty lashes, according to the degree of the offence and the person's station in life. Dakaits were to be executed in the villages to which they belonged, "for a terror and example to others." The punishment for professional dakaits was death, and their families were to be condemned to perpetual slavery. In 1773 Warren Hastings proposed that all convicted felons sentenced for life should be sold as slaves. He argued that by this means Government would be released from a heavy expense in erecting prisons, keeping guards and maintaining accumulating crowds of prisoners. The sale of convicts would moreover raise a considerable sum, if the disorders continued, and the community would suffer no loss by the want of such troublesome members.

[2]The original Regulation is dated 21st August 1772, and will be found at page 1 of *Colebrooke's Supplement*. In all suits regarding inheritance, marriage, caste and other religious usages or institutions the laws of the Koran with respect to Mahomadans, and those of the Shaster with respect to Gentús, were to be invariably adhered to; and on such occasions the Múlvís and Brahmins were to attend and expound the law. The custom of levying *chauth* (fourth part), *panchattara* (fee of five per cent.) or any other fee or commission on the amount recovered, and *itlak*, or fees on the decision of cases, as well as all heavy arbitrary fines, was abolished for ever. Persons guilty of flying from one Court to another, in order to prevent and protract the course of justice, were to be considered non-suited and were also to be liable to fine. Persons guilty of preferring groundless, litigious, or vexatious appeals were to be punished by an enhancement of costs.

§ 192.—In 1774, when the Collectors were recalled and Provincial Councils established at Calcutta, Bardwan, Dacca, Múrshedabád, Dinajpore and Patna, the administration of civil justice was vested in these Councils to be exercised by one member in rotation. The Amils, who remained at the Collector's Stations, were also entrusted with certain judicial powers, but an appeal lay from their decisions to the Provincial Councils. Mr. Hastings, to whom the superintendence of the administration of criminal justice had been particularly entrusted by the Government, now found this duty too onerous, and relinquished it. The Nizámat Adálat was in consequence moved back from Calcutta to Múrshedabád and Mahomed Reza Khan was, on the recommendation of the Governor-General and Council, appointed to be "Náib Súbah or Minister of the Sarkar and guardian of his minority, with authority to transact the political affairs of the Sarkar, to superintend the *Faujdarí* Courts and the administration of criminal justice throughout the country, and to enforce the operation of the same on the then existing establishment, or to new model and correct it."[1] At the same time, in order to suppress *dakaity* or gang-robbery, *Faujdárs* or Native Officers of Police were appointed to the fourteen districts into which Bengal was divided, with an appropriate number of armed men for the protection of the inhabitants and the transmission of intelligence of matters relating to the peace of the country. The administration of criminal justice was, it may be observed, still conducted in the name of the Nawáb Názím and by his officers; but the Company's Government effectually controlled and directed all its details.[2]

[1] *Proceedings of the Governor-General and Council of* 18*th October* 1776.

[2] This will appear from the instructions given to Mahomed Reza Khan and the sanction accorded to arrangements proposed by him. It will be recollected that the grant of the *Díwání* conferred on the Company jurisdiction in revenue and civil matters only (*ante*. p. 2), while the Nizamat or administration of criminal justice remained in the hands of the Nawáb. Warren Hastings (letter of 10th July 1773) pointed out that cases might happen in which an invariable observance of the rule of leaving this jurisdiction in the hands of the Nawáb and his officers might prove of dangerous consequence to the power by which the Government of the country was held, and to the peace and security of the inhabitants. "Wherever such cases happen," he continues, "the remedy can only be obtained from those in whom the Sovereign power exists. It is on these that the inhabitants depend for protection, and for the redress of all their grievances, and they have a right to the accomplishment of this expectation, of which no treatise nor casuistical distinctions can deprive them."

§ 193.—The next important change was made in 1780, when distinct Civil Courts, independent of the Provincial Councils, were established in the six divisions above-mentioned. Each of these Courts was to be presided over by a Company's Civil Servant, styled *Superintendent of Díwání Adálat*, who was to have jurisdiction in all causes of inheritance to *zemindáris talúkdáris, chaudrahis* or other real property, all matters of personal property, and in short, all other causes of a civil nature. All demands of rents or revenues,[1] and all causes having an immediate relation to the public revenue, were reserved for the jurisdiction of the Provincial Councils. Petitions of appeal against the decisions of the Superintendent of Díwání Adálat were to be presented to the Provincial Council[2] for transmission to the Governor-General and Council "in their Department of Sádr Díwání Adálat." It was soon found that the local jurisdiction of the six Civil Courts thus constituted was too extensive, and in the following year eighteen Civil Courts, inclusive of these six, were established at the most populous and central towns in the provinces,[3] Fourteen of these Courts were placed under the charge of Company's Servants "hereafter to be styled Judges instead of Superintendents." The remaining four[4] were placed under the Collectors, "the countries over which it was proposed to extend their jurisdiction, being in general situated on the frontiers of the provinces, and so poor and thinly peopled, that any additional Courts or jurisdiction, instead of affording relief, might be productive of vexation to the inhabitants." The duty of the Civil Courts was, however, to be considered entirely distinct from that of the Collectorships.

§ 194.—The increasing work of the Sádr Díwání Adálat was found to take up more time than the Governor-General and Members of Council could spare from their other duties; and accordingly a separate Judge was (18th October, 1780)

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[1] *Regulation of 11th April* 1870—*Colebrooke's Supplement*, p. 14. This was the first demarcation of the separate jurisdiction of *Civil Courts* and *Revenue Courts*, which exists to the present hour.

[2] Lest it might be "a discouragement" to the appellant to present his petition of appeal to the same person who had decided against him in the first instance.

[3] *Regulation of 6th April* 1781—*Colebrooke's Supplement*, p. 27. Ten of these stations are still the head-quarters of District Courts.

[4] Chettra, Boglepore, Islamabad, and Rungpore.

appointed to this Court.[1] The Directors did not, however, approve of this arrangement, and in consequence of their orders the Governor-General and Council resumed charge of the Court on the 15th November 1782. At the same time it was enacted by the 21st Geo. III, cap. 70, s. 21, as follows :—"Whereas the Governor-General and Council, or some Committee thereof or appointed thereby, do determine on appeals and references from the country or Provincial Courts in civil causes : be it further enacted that the said Court shall and lawfully may hold all such pleas and appeals in the manner and with such powers as it hitherto hath held the same and shall be deemed in law a Court of Record ; and the judgments therein given shall be final and conclusive, except upon appeal to His Majesty in civil suits only, the value of which shall be five thousand pounds and upwards."[2] By the 23rd section of the same Statute, the Governor-General and Council were empowered to frame regulations for the Provincial Courts and Councils.

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[1]Sir Elijah Impey, Chief Justice of the Supreme Court, was the Judge appointed on Rs. 7,000 a month. This was a politic act of Hastings to conciliate the Supreme Court, the proceedings of which in no slight degree embarrassed his administration. On other grounds also it was a wise measure, for the newly-created justiciary sadly required guidance and instruction. The new Judge's first act was to draw up a Regulation consisting of 95 sections, which consolidated the useful portion of all previous rules with proper principles of procedure, so as to make a simple Code for the Mofussil Courts. He first provided justice, equity and good conscience as the rule of substantive law to be administered in civil cases not otherwise provided for—a provision which is yet in force. The original Regulation will be found at page 37 of *Colebrooke's Supplement*. The reader is doubtless aware that Sir Elijah Impey was recalled for having accepted the office, and his appointment formed one of the articles of impeachment against Hastings. The conduct of Sir Elijah Impey was certainly irreproachable, for he declined to appropriate any portion of the salary of the new office, until the pleasure of the Lord Chancellor should be known.

[2]The 3 & 4 Wm. IV, cap. 41, s. 24, afterwards empowered His Majesty in Council to make Regulations as to the amount or value of the property in respect of which an appeal may be made to the Privy Council ; and an order was made on the 10th April 1838, fixing Rs. 10,000 as the lowest sum for which an appeal may be preferred from any Court in India as matter of right. The limit still remains at this amount. Appeals to the Privy Council in civil cases are now regulated by Act VI of 1874. There is no right of appeal in criminal cases. *The Queen* v. *Edalji Byramji, and others* III Moo. Ind. Ap., 468 : *The Queen* v. *Allú Parú and others*, III Moo. Ind. Ap., 488 : *The Queen* v. *Jaikissen Mukerji*, IX Moo. Ind. Ap., 168.

§ 195.—Under orders of the 6th April 1781 the *Faujdárs* introduced in 1774 were abolished, and the Judges of the Civil Courts were invested with the power of Magistrates of apprehending dakaits and persons charged with the commission of any crime or acts of violence. They were not, however, authorized to try or punish such persons, but were to send them immediately to the Darogah of the nearest *Faujdári* Court with a charge in writing, setting forth the grounds on which they had been apprehended. Certain zemindárs were also invested with similar jurisdiction. At the same time the Nawáb was requested "to give orders that lists with the names of all prisoners in actual confinement by orders of the *Faujdári* Courts be monthly transmitted to the Governor-General, with separate lists of all persons committed in the course of the month, certifying by what authority each of them was apprehended: and similar lists of all prisoners discharged within the same period, together with copies of the *fatwas* or sentences and hukms or orders of the Názím, passed and issued in the course of the same month."[1] An officer called *Remembrancer of the Criminal Courts* was appointed on a salary of sik. Rs. 1,000 per mensem to keep these returns so as to prove an effectual check on all the persons employed in the administration of criminal justice, as well as for such other purposes as the experience of his office might suggest.

§ 196.—In 1787 another change of system was made in pursuance of instructions brought out by Lord Cornwallis. The Directors, stating that they were actuated by the necessity of accommodating their views and interests to the subsisting manners and usages of the people, rather than by any abstract theories drawn from other countries or applicable to a different state of things, ordered that the offices of Judge and Collector should be united in the same person, who was also to have the power of apprehending offenders against the public peace, their trial and punishment being still, however, left with the

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[1]Resolution of the Governor-General and Council, dated 6th April 1781, *Colebrooke's Supplement*, p. 130. This is another and an important instance of the direct control assumed by the Company's Government over the administration of criminal justice.

Mahomadan officers of the Nawáb.[1] The greater simplicity, energy, justice and economy expected to be the result of the measure were assigned as additional reasons for the change, which had been advocated by Sir John Shore. "People accustomed to a despotic authority," he observed, "should look to one master." It is impossible to draw a line between the revenue and judicial departments in such a manner as to prevent them clashing; and in this case either the revenues must suffer, or the administration of justice must be suspended." Accordingly, with the exception of the three Civil Courts in the cities of Patna, Múrshedabád and Dacca, the European Civil Servants in each of the districts were vested with the powers of Judge, Collector and Magistrate, for their guidance in each of which capacities a separate set of Regulations was drawn up, and their proceedings were directed to be kept wholly distinct in each department.[2]

§ 197.—Up to 1790 the administration of criminal justice had been left in the hands of the Nawáb Názim and his officers, the European Magistrates merely arresting criminals and making them over to these authorities. It was found, however, that, "from the inefficacy of the authority of the English Magistrates over the zemindárs and other landholders, the course of criminal justice throughout the country remained in a very weak state," while "many of the lowest and most indigent classes of people were frequently liable to remain for a long period in confinement, where the length of their sufferings, from the delay in their trial, very often more than equalled their demerits." The numerous robberies, murders, and other enormities daily committed throughout the country at the same time evinced the inefficiency of the existing system for the repression of crime. The Governor-General in Council therefore "with a view to ensure a prompt and impartial administration of the criminal law, and that all ranks of people" might "enjoy security of person and property," resolved "to resume the superintendence of criminal justice

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[1]As Magistrates they were also empowered to hear and determine complaints for petty offences, such as abusive language or calumny, inconsiderable assaults or affrays, and to punish the same, when proved, by corporal punishment not exceeding fifteen rattans, or imprisonment for not more than fifteen days. This was the first direct exercise of criminal jurisdiction by European functionaries in the Mofussil.

[2]See the original Regulations, pp. 93, 131 and 253 of *Colebrooke's Supplement.*

throughout the provinces". Accordingly it was enacted by a Regulation, dated the 3rd December 1790, that the Nizámat Adálat should be removed from Múrshedabád to Calcutta; that it should thenceforth consist of the Governor-General and Members of Council, assisted by the Kazí-al-Kozáat or head Kazí and two Muftís; and that it "should exercise all the powers lately vested in the Náib Názim as Superintendent of the Nizámat Adálat, leaving the declaration of the law, as applicable to the circumstances of the case, to the Kazí-al-Kozáat and Muftís agreeable to former practice."

§ 198.—At the same time four Courts of Circuit were established for the divisions of Calcutta, Dacca, Múrshedabád, and Patna, each to be presided over by two Covenanted Civil Servants, to be denominated "Judges of the Court of Circuits for the divisions" to which they were respectively appointed, assisted by a Kazí and Muftí. The Judges were to make two circuits during the year, and to hold two gaol deliveries in each of the districts included in their divisions. "The charge against the prisoner, his confession (which was always to be received with circumspection and tenderness)", the evidence for the prosecution, and that for the defence, were to be heard in his presence, and in that of the Kazí and Muftí. The *fatwa*, or law applicable to the case, was then to be written at the bottom of the record by the Kazí and Muftí. The Judges were carefully to consider such *fatwa*, and if it appeared to them consonant to natural justice and to the Mahomadan law,[1] were to pass sentence accordingly, and issue their warrant to the Magistrate for its execution, except when death or

[1]This law was at the same time modified as to cases of murder, the relations of the murdered person being debarred from pardoning the offender. It was also enacted that the doctrine of Yusaf and Mahomed should be followed without the distinctions of Abú Hanífah, or in other words, that the intention of the criminal either evidently or fairly inferrible from the nature and circumstances of the case, and not the manner or instrument of perpetration (except as evidence of intent) should constitute the rule for determining the punishment. According to Abú Hanífah, it was murder to kill a child by cutting its thro at with a lethal weapon, such as a knife ; but to kill by it holding its head under water until it was suffocated was not murder. Professional criminals understood the difference, and acted accordingly. The punishment of mutilation was abolished in the following year (1791), fourteen years' imprisonment with hard labour being substituted for the loss of two limbs and seven years' imprisonment for the loss of one.

perpetual imprisonment was the punishment ordered, in which cases the execution of the sentence was to be suspended until the orders of the Nizámat Adálat were received.[1] The judges of the Civil Courts in their capacity of Magistrates were to apprehend all murderers, robbers, theives, house-breakers, and other disturbers of the peace. They were also on complaint of such offences to issue their warrant for the arrest of the persons complained against. They were to hold a preliminary inquiry into the facts. If it appeared that the crime alleged had never been committed, or that the suspicion of the prisoner was wholly groundless, he was to be forthwith discharged. If, on the contrary, it appeared that the crime had been actually committed, and that there were grounds for suspecting the prisoner to have been guilty thereof, he was to be committed for trial at the next sitting of the Court of Circuit. Murder, robbery, theft, and house-breaking were non-bailable. For other offences bail might be taken. The Magistrates were invested with power to hear and determine, without any reference to the Court of Circuit, complaints of petty offences, such as abusive language or calumny, inconsiderable assaults or affrays, and to punish the same, when proved, by corporal punishment not exceeding fifteen rattans, or imprisonment not exceeding the term of fifteen days.[2]

§ 199.—The next change of system was made in 1793, from which year are dated the REGULATIONS OF THE BENGAL CODE,

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[1]The two Judges sat together, but in the event of the occasional absence or indisposition of one, the other might act alone.

[2]By orders of the 15th April 1791, fine was allowed to be substituted for corporal punishment or imprisonment. By orders of 24th February 1792, the Magistrates were authorized to punish petty thefts with corporal punishment not exceeding thirty rattans, or imprisonment not exceeding one month. In the same year a reward of ten sicca rupees was offered for the conviction of each dakait, criminals released after undergoing six months' imprisonment or more were allowed a sum sufficient to maintain them for a month, and prosecutors and witnesses were allowed their expenses, all which or similar provisions are to be found in the present system. By orders of the 7th December 1792, the Police were taken out of the hands of the land-holders and farmers, and placed immediately under the Magistrates, who were authorised to appoint Daroghas for jurisdictions not exceeding ten coss square ( a coss is about two miles), into which they were to divide their districts. Some of the rules then laid down for the guidance of the Police are to be found in the existing Code of Criminal Procedure. The village watchmen were declared subject to the orders of the Darogha.

with which more specially this work is concerned. Lord Cornwallis had carried out the instructions of the Court of Directors in uniting the offices of Judge, Collector and Magistrate in the same person on his first arrival; but experience satisfied him that the result of this system would be to sacrifice the administration of justice to the supposed fiscal interests of Government. He therefore determined to vest the collection of revenue and the administration of justice in separate officers, to abolish the Mál Adálats or Revenue Courts, and to withdraw from the Collectors of Revenue all judicial powers, transferring the cognizance of all causes previously tried by the Revenue Officers to the Courts of Díwání Adálat.[1] At the same time Government resolved "to divest itself of the power of interfering in the administration of the laws and regulations in the first instance; reserving only, as a Court of appeal or review, the decision of certain cases in the last resort; and to lodge its judicial authority in Courts of Justice." It was further declared that "the authority of the laws and regulations so lodged in the Courts, shall extend not only to all suits between native individuals, but that the officers of Government employed in the collection of the revenue, the provisions of the Company's investment, and all other financial concerns of the public, shall be amenable to the Courts for acts done in their official capacity in opposition to the Regulations;" and, that "Government itself, in superintending the various branches of the resources of the State, might be precluded from injuring private porperty," the Governor-General in Council "determined to submit the claims and interests of the public in such matters to be decided by the Courts of Justice, according to the Regulations, in the same manner as suits between private individuals."[2]

§ 200.—The following is the constitution of the Courts for the administration of civil and criminal justice, as remodelled by the Regulations of 1793: I.—The *Sádr Diwání Adálat* and *Nizámat Adálat* which may be regarded as a single Court having a civil and criminal side. The members of this Court

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[1]The considerations which induced Lord Cornwallis to make this change are set forth in the Preamble to Regulation II of 1793, see *post*. See also *Harrington's Analysis*, vol. i, pp. 24—27.

[2]See Preamble to Regulation III of 1793. Much useful information as to the manner in which claims against Government, as distinguished from claims against its officers for malfeasance, were to be dealt with will be found in Regulation VIII of 1806, especially in the Preamble.

were the Governor-General and Members of Council, with the addition, on the criminal side, of the Head *Kazí* of Bengal, Bahár, and Orissa, and two *Muftis*.[1] II.—*Four Provincial Courts of Appeal and Circuit*, one for each of the divisions of Calcutta, Dacca, Múrshedabád and Patna. Each of these Courts were presided over by three Judges.[2] III.—*Twenty-three Zillah and three*[3] *City Courts*, each presided over by a single Judge, who also held the office of Magistrate for the Zillah or City under his jurisdiction, in which latter capacity he was further vested with the superintendence and control of the Police.[4] To each of these three classes of Courts was attached a Registrar, who was the Chief Ministrial Officer of the Court, and moreover exercised minor judicial powers.[5] IV.—*Native Commissioners* for the trial of civil suits, chosen from amongst the principal proprietors of land, farmers, tehsildars, managers, under-farmers, creditable merchants, traders, and shopkeepers, altamghadars, jagírdars, and Kazís.[6]

§ 201.—The services of these Native Commissioners might be utilized in three ways : (1) as *amins* or referees, for the trial of such suits for *money* or *personal property* not exceeding fifty sicca rupees in amount or value, as might be referred to them by the Judge ; (2) as *salisán* or arbitrators, for the decision of such suits as the parties referred to them under an

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[1]See section 2 of Regulation VI of 1793, and section 67 of Regulation IX of 1793. The Preamble to this latter Regulation contains a good summary of the antecedent history of the administration of criminal justice.

[2]These were, in fact the Courts of Circuit established in 1790, remodelled as to their constitution and jurisdiction.

[3]At Dacca, Múrshedabád and Patna. A list of all these Courts will be found in section 2 of Regulation III of 1793.

[4]See Regulation XXII of 1793.

[5]The Junior members of the Covenanted Civil Service were also attached as Assistants to the Judge-Magistrate.

[6]Natives had been employed in this way from the beginning. By the 11th article of the Regulation of the 15th August 1772, "all disputes of property, not exceeding ten rupees," were to "be decided by the head farmer of the pargana to which the parties belonged"; "and his decree was to be final." By the 6th article of the Regulation of the 5th July 1781, six Munsifs or public arbitrators at a salary of Rs. 50 each were attached to each Mofussil Díwání Adálat. Regulation XL of 1793, however, largely extended their employment and jurisdiction. Those who say that the system of Lord Cornwallis wholly closed the public service against natives appear not to have sufficiently considered the provisions of this Regulation.

arbitration bond containing an agreement to abide by their decision :[1] as Munsifs, for receiving and trying suits preferred against under-renters or *raiyats* in the estate, farm, or *jagir* in virtue of which they were vested with the office of Commissioner. An appeal lay from their decisions to the Judge. These officers had no criminal jurisdiction. The Registrars had jurisdiction in suits for money or personal property not exceeding in amount or value 200 sicca rupees ; in suits for rent-paying land, the annual produce of which did not exceed the same amount ; and for lakhiráj land, the annual produce of which did not exceed twenty sicca rupees. Their decrees were not, however, valid until approved and countersigned by the Judge.[2] Registrars had no criminal jurisdiction. The Judge-Magistrate in his capacity of Magistrate exercised a minor original criminal jurisdiction in respect of petty assaults and thefts, and committed persons charged with more serious offences for trial before the Court of Circuit.[3] In his office as Civil Judge, he was empowered to take cognizance of all suits respecting the succession or right to real or personal property, land-rents, revenues, debts, accounts, contracts, partnerships, marriage, caste, claims to damages for injuries, and generally of all suits and complaints of a civil nature. The Judges were "invariably to state in every decree the grounds on which" it was passed ; and an appeal lay from their decrees in all cases to the Provincial Court.[4]

§ 202.—The Provincial Courts were empowered to try in the first instance any suit or complaint, or any matter of a civil nature transmitted for trial by the Governor-General in Council or by the Sádr Díwání Adálat. They might receive any original suit cognizable by a Zillah or City Judge and direct him to try it, if he had refused so to do. They might receive petitions respecting suits pending before or decided by Zillah or City Judges, and direct them to proceed in the matter thereof, if

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[1]Their decisions is these cases were final unless corruption were proved by the oaths of two creditable witnesses—Clause 3, section 10, Regulation XL of 1793.

[2]Section 6 of Regulation XIII of 1793.

[3]His jurisdiction as Magistrate remained in all essential respects the same as it was constituted in 1790, Regulation IX of 1793 merely incorporating without alteration the rules applicable to his duties contained in the old Regulation of the 3rd December 1790, and one or two amendments subsequently made—see p. 142, note.

[4]Section 20 of Regulation III of 1793.

they had refused to do so. They were empowered to receive charges of corruption against the same functionaries; and, if the complainant made oath of the truth of the charge and gave security to prosecute it, they were to forward it to the Sádr Díwání Adálat.[1] In the exercise of civil appellate functions, they heard appeals perferred from the decrees of the Zillah and City Judges; and, when the original suit had not been sufficiently investigated, or for any other reasonable cause they might take new evidence, or remand the case to have it taken. The decrees of the Provincial Courts were final in all suits in which the decree was for lakhiráj land, the annual produce of which did not exceed one hundred sicca rupees; or for any revenue-paying estate or dependent talúk, the annual produce of which did not exceed one thousand sicca rupees, and in all other cases, when the decree was for a sum of money or personal property or real property, the amount or value of which did not exceed one thousand sicca rupees. In all cases other than these, an appeal lay from the decrees of the Provincial Courts to the Sádr Díwání Adálat.[2] The same Judges were also Judges of the Court of Circuit, which, as a Court of original criminal jurisdiction, tried all prisoners committed by the Magistrates. Sentence was passed according to the *fatwa* of the *Kazí* and *Muftí*, and was carried into execution at once, unless it were a sentence of death, or of imprisonment for life, in which cases it was not to be executed until after a reference to, and receipt of the final order of, the Nizámat Adálat.[3] There was no appeal from the Court of Circuit.

§ 203.—The Sádr Díwání Adálat as constituted in 1793 exercised no original civil jurisdiction, being a Court of appeal and superintendence only. As an Appellate Court, it heard appeals from the decrees of the Provincial Courts in cases in which an appeal was allowed by law.[4] It might take additional evidence when for any cause it deemed it reasonable to do so.[5] Its decrees were final in all suits whatever. It was empowered

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[1]Section 6 of Regulation V of 1793.

[2]Section 30 of Regulation V of 1793, and section 10 of Regulation VI of 1793.

[3]Section 47 of Regulation IX of 1793, which is the same almost *verbatim* as th 32nd clause of the old Regulation of 3rd December 1790.

[4]See last para. and note 2 above.

[5]The witnesses might be examined by a Judge in open Court or by the Registrar.

to receive original suits or appeals in which the Zillah or City Judges, or the Provincial Courts had respectively omitted or refused to proceed, and could by precept command those authorities to proceed to hear and determine them. In like manner it might receive petitions respecting suits or appeals pending before the same authorities, in case they had refused to receive them, and might direct them to receive such petitions and pass proper orders thereupon. It was empowered to permit the Judges of the Provincial Courts and of the Zillah and City Courts to adjourn their Courts occasionally for not more than one month, such adjournments collectively not to exceed two months in the year.[1] It could suspend Judges of the Provincial or Zillah or City Courts, who wilfully disobeyed or neglected to perform the commands contained in any process, rule, or order of the Courts to which they were subordinate.[2] It was empowered to receive charges of corruption against the Judges of the Provincial Courts or of the Zillah or City Courts. Such charges could be tried by the Sádr Díwání Adálat; or, in the case of a Judge of a Zillah or City Court, by the Provincial Court; or, in the case of a Judge of a Provincial Court, by a Special Commission of three or more Judges of the other Provincial Courts; or, the Governor-General in Council might order the accused party to be prosecuted in the Supreme Court of Judicature by the law-officers of Government. If the charge, were established, the Governor-General in Council might remove the Judge, or suspend him from the Company's service, or pass such other order as might appear proper. The jurisdiction of the Nizámat Adálat was exercised in capital cases, and in cases in which a sentence of imprisonment for life appeared proper, such cases being referred for final orders by the Courts of Circuit. In addition to these purely judicial functions, it exercised a general superintendence over the administration of criminal justice and the Police of the country.

§ 204.—Such is a sketch of the constitution and jurisdiction of the Courts of justice as organised in 1793. It is usually said

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[1]And see Regulation III of 1798, which provides for an adjournment during the *Dusserah* and *Mohurrum*. Section 10 of Regulation I of 1806 empowered the Sádár Court to disallow vacations when the work was in arrear. Vacations are now provided for by section 17 of Act VI of 1871

[2]Section 15 of Regulation V of 1793, and section 13 of Regulation VI of 1793.

that the system then established exists, more or less altered, at the present day; but it might convey a more accurate impression to say that so many alterations and improvements have been made, that the architects of 1793, if now alive, would, with difficulty, recognize the original structure in the enlarged and improved modern edifice. In order to convey in a brief space as clear as possible a view of the changes which have been made during a period of eighty-two years, it will be convenient to take separately each of the Courts which existed in 1793, and succinctly trace its history from that period down to its abolition, or to the present time, if its existence has continued so long, reserving certain important points for subsequent separate notice. This will be best done in the following order: I.—Sádr Díwání and Nizámat Adálat. II.—Provincial Courts and Courts of Circuit. III.—Registrars. IV.—Judge-Magistrates, subsequently divided into (1) Judges, and (2) Magistrates. V.—Native Judicial Officers.

§ 205.—In 1795, the jurisdiction of the Sádr Díwání[1] Adálat and Nizámat Adálat[2] was extended to the province of Benares. In 1797 the limit of value for appeals from decrees passed by the Provincial Courts of appeal for money or other personal property was raised from one thousand to *five thousand* sicca rupees:[3] and in the following year, the same limit was extended to decrees for land or other real property[4]. These changes were made with a view to diminish the number of appeals and so reduce the work of the Sádr Díwání Adálat; but, by reason of the various public duties of the Governor-General and of the Members of the Supreme Council, unavoidable delays occurred, and the number of undecided causes in appeal increased.[5] It was further considered essentially necessary to the impartial, prompt, and efficient administration of justice, and to the permanent security of the persons and properties of the native inhabitants of the provinces, that the Governor-General in Council, exercising the supreme legislative and executive authority of the State, should administer the judicial functions of the Government by the

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[1]Regulation X of 1795.

[2]Section 22 of Regulation XVI of 1795. By section 23, no Brahmin was to suffer death. Transportation was to be substituted for the capital sentence.

[3]Regulation XII of 1797.

[4]Regulation V of 1798.

[5]Preamble to Regulation II of 1801.

means of Courts of justice distinct from the legislative and executive authority of the State. Accordingly it was enacted in 1801 that the Court of Sádr Díwání[1] Adálat and the Court of Nizámat[2] Adálat should thenceforth consist of three Judges to be denominated respectively Chief Judge, and Second and Third Judges, of whom the Chief Judge was not to be the Governor-General or Commander-in-Chief but was to be one of the Members of the Supreme Council to be appointed by the Governor-General in Council; and the Second and Third Judges were to be appointed from among the Covenanted Civil Servants, not being Members of the Supreme Council. At the same time the Nizámat Adálat was invested with powers of suspending the Judges of the Courts of Circuit and the Zillah and City Magistrates, similar to those previously conferred upon the Sádr Díwáni Adálat in the case of the same functionaries as Judges of the Provincial Courts and Zillah and City Courts. The Sádr Díwání and Nizámat Adálat were further directed to report to the Governor-General in Council all instances of wilful neglect of duty or aggravated misconduct by a Covenanted Servant employed in any of the Courts in a judicial or ministerial capacity: but, if the case appeared to involve an error of judgment only or a slight default, for which an admonition from the Court was deemed a sufficient correction, the Court were authorized, in the former case, to notice the error or the information and guidance of the party who might have committed it; and in the latter case, to advise him of his fault and admonish him accordingly.[3]

§ 206.—The jurisdiction of the Sádr Díwání[4] Adálat and Nizámat[5] Adálat was extended in 1803 to the provinces ceded by the Nawáb Vizier, and in the course of the following two years to the Conquered Provinces and Bundlekund.[6] In 1805;

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[1]Section 3 of Regulation II of 1801.

[2]Section 10 of Regulation II of 1801.

[3]Sections 7 and 14 of Regulation II of 1801. These provisions have only recently been repealed.

The reader may be reminded that a reference to the second column of the Chronological Table will show whether any provisions the sections containing which are quoted in these notes, have or have not been repealed.

[4]Regulation V of 1803.

[5]Regulation VIII of 1803.

[6]Sections 10 and 14 of Regulation VIII of 1805 and Regulation IX of 1804.

in order that "the separation of the judicial authority from the executive authority in all their respective branches and gradations (which formed a fundamental principle of" the "constitution" of 1793) might "be carried into full and complete execution both in form and in practice,"[1] it was enacted that the Chief Judge was no longer to be a Member of Council, but was to be selected from among the Covenanted Servants who were not Members of the Supreme Council. This provision was, however, rescinded in 1807, and it was enacted that the Courts of Sádr Díwání Adálat and Nizámat Adálat should consist of a Chief Judge, *being a Member of the Supreme Council*, but not the Governor-General nor the Commander-in-Chief, and of three Puisne Judges to be selected from among the Company's Covenanted Servants.[2] In 1811 it was enacted that these Courts should consist of a Chief Judge and of as many Puisne Judges as the Governor-General in Council might, from time to time, deem necessary for the despatch of the business of the Courts. The words "being a Member of the Supreme Council" were here omitted as a necessary qualification for the Chief Judge.[3] In 1829 the denomination of Chief, First, Second, Third, &c., Judge was discontinued.[4] In 1808 it was enacted that, when it was necessary for the speedy determination of cases, one Judge of the Nizámat Adálat might sit and exercise the powers of the Court; but when he did not concur with the Court of Circuit, he was to wait until another Judge could sit with him before orders were passed.[5] In 1810 one Judge of the Sádr Díwání Adálat was empowered to hold a sitting of this Court, when, from unavoidable cause, a Second Judge was not available, but he could not *reverse* or *alter* any decision or order until a Second Judge sat with him.[6] In 1814 it was made a necessary

[1]Preamble to Regulation X of 1805.

[2]Regulation XV of 1807.

[3]Regulation XII of 1811.

[4]Section 2 of Regulation III of 1829.

[5]Section 6 of Regulation VIII of 1808, and see section 17 of Regulation XXV of 1814.

[6]Section 6 of Regulation XIII of 1810. Two Judges had been previously necessary to hold a sitting. In 1831, the rules as to the powers of a single Judge in the Sádr Díwání and Nizámat Adálat were further modified and amended by Regulation IX of that year. See also section 16, Regulation XXV of 1814 and Act II of 1843. The latter Act enacted that if in trying an appeal, regular or special, a single Judge was of opinion that the decision ought to be reversed or altered, he was to call in two other Judges, and three Judges sitting together were to decide the appeal without any additional voice.

qualification for the office of Judge of the Sádr Díwání Adálat and Nizámat Adálat that the person to be appointed should have officiated for not less than three years as Judge of the Provincial Court of Appeal or Court of Circuit; or that he should previously have discharged judicial functions, civil or criminal, for a period of not less than nine years.[1] At the same time the Sádr Díwání Adálat was empowered to transfer to their own file and try suits amounting to 50,000 current rupees, or 43,103 sicca rupees (being the amount fixed for appeals to the King in Council), whenever, from pressure of business in the Provincial Courts, it appeared that they could in this way be more conveniently or expeditiously tried.[2]

§ 207.—In 1831 a Court of Sádr Díwání and Nizámat Adálat was constituted for the Western Provinces;[3] and the jurisdiction of this Court of Nizámat Adálat was declared to extend to the province of Kumaon and the Saugor and Nurbudda territories. The Court was to consist of one or more Judges, assisted by two Muftís and a Registrar, and was to be stationed at Allahabad or any other place directed by the Governor-General.[4] Provision was made in the same year for referring questions upon which there was an equality of voices in either Court for the decision of a Judge of the other Court: and it was declared sufficient for the latter to form and record his judgment on a careful perusal and consideration of the proceedings, and without requiring the attendance of the parties or their vakils.[5] The Court of Sádr Díwání and Nizámat Adálat at Calcutta was abolished in 1862 upon the establishment of the present High Court under the provisions of the 24 & 25 Vic., cap. 104, s. 8.[6] The Court of Sádr Díwání and Nizámat Adálat of the Western Provinces was abolished

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[1]Regulation XXV of 1814.

[2]Clause 1, section 5 of Regulation XXV of 1814.

[3]See *ante*, § 185.

[4]Regulation VI of 1831.

[5]Sections 9 and 10 of Regulation IX of 1831. For an example, see *Udey Kunwar* v. *Roshan Ali and others*, VI, B. L. R., 283, and XIII, Moo. Ind. Ap., 585.

[6]The Supreme Court was abolished at the same time and by the same provisions. The Judges of both Courts became Judges of, and the jurisdictions of both Courts were transferred to, the new High Court. The change is usually described by saying that the Supreme and Sádr Courts were amalgamated in the High Court.

in 1866, on the establishment of a High Court for the North-Western Provinces under the provisions of section 16 of the same Statute.

§ 208.—Turning now to the Provincial Courts and Courts of Circuit, provision was made in 1794 for forming two Courts of Circuit in each division so as to expedite the gaol deliveries which were to be held half-yearly in each zillah. One Court was to consist of a Judge, the Registrar and the Kazí : and the other of a Judge, one of the Assistants to the Registrar and the Muftí.[1] The Third Judge was to remain at the Sádr Station in order to perform the other duties of the Court : and the three Judges were to do this in this in rotation.[2] The same Judge was not to make two circuits successively to the same districts. In 1795 a Provincial Court of Appeal[3] and Court of Circuit[4] was established for the province of Benares. In 1797 it was enacted that there should be only one Court on Circuit, which was to be presided over by the Second and Third Judges alternately, attended by the Kazí and Muftí alternately.[5] In 1799 provision was made for holding a monthly gaol delivery in the cities of Dacca, Múrshedabád, and Patna.[6] In 1803 a Provincial Court of Appeal[7] and Circuit[8] was established at Bareilly for the provinces ceded by the Nawáb Vizier. The number of Judges in all the Provincial Courts was raised from three to four in 1814 :[9] and in 1826 the Governor-General in Council was empowered to appoint to each Court as many Judges as were necessary for the despatch of business.[10] Three years' previous service as a Judge or Magistrate, or six years' previous discharge of judicial

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[1]Section 3 of Regulation VII of 1794 ; and see sections 11 and 12 of Regulation XXV of 1814 as to the powers of the Judge who remained at headquarters.

[2]Section 4, Regulation VII of 1794 ; and see section 8, Regulation I of 1806 ; Regulation I of section 3, Regulation V of 1814.

[3]Regulation IX of 1795.

[4]Section 5, Regulation XVI of 1795.

[5]Section 2 of Regulation III of 1797.

[6]Regulation II of 1799.

[7]Section 2, Regulation IV of 1803.

[8]Section 2, Regulation VII of 1803.

[9]Regulation V of 1814.

[10]Regulation I of 1826. The official designations of First, Second, Third, Fourth Judge, &c., were abolished by section 2, Regulation III of 1829.

functions, civil or criminal, was, in the former year, made a necessary qualification for the office of Judge of a Provincial Court.[1]

§ 209.—It was enacted in 1793 that, in all cases of a difference of opinion between the Judges of the Provincial Court of Appeal and Circuit, the opinion of the majority was to determine; that, when there were only two Judges present, the senior was to have the casting vote; and that two Judges were necessary to hold a Court of Appeal.[2] In 1797 it was provided that, in cases in which the decisions of the Provincial Court were final, the casting vote of the senior Judge should prevail only when it was for affirming the decree of the lower Court; and that, when it was for reversing or altering such decree, the case should lie over until the return of the Third Judge from circuit, when it should be decided by a majority of voices.[3] In 1814 it was enacted generally that, in all cases of a difference of opinion between two Judges, the determination was to be suspended until the opinion of a Third Judge could be taken, and the decision was then to be according to the majority of voices.[4] One Judge of the Provincial Court was in 1810 empowered to hold a Court of Appeal, when from unavoidable cause two Judges were not available: but if he were of opinion that the decision or order ought to be reversed, he was not to pass final orders until one or more of the other Judges could sit with him.[5] It was subsequently enacted that, if a Second Judge sitting afterwards upon the same appeal concurred in the opinion of the previous Judge, the decree might be passed accordingly without waiting for a sitting of both Judges.[6]

§ 210.—In 1797 the decrees of the Provincial Courts for money or personal property not exceeding five thousand rupees in amount or value were made final.[7] In 1808, an original civil jurisdiction was given to the Provincial Courts in all regular

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[1]Section 2, Regulation XXV of 1814.

[2]Regulation XLVII of 1793, extended to Benares by Regulation XXV of 1795. See as to the Ceded Provinces, Regulation XV of 1803, extended to the Conquered Provinces, &c., by section 17, Regulation VIII of 1805.

[3]Section 7, Regulation III of 1797.

[4]Sections 9 and 14 of Regulation XXV of 1814. See also section 4 of Regulation III of 1829.

[5]Section 2 of Regulation XIII of 1810.

[6]Section 8 of Regulation XXV of 1814.

[7]Section 2, Regulation XII of 1797.

suits for an amount or value exceeding 5,000 sicca rupees, which were thenceforth to be tried in these Courts and not in the Zillah and City Courts.[1] Provincial Courts were further empowered in 1814 to transfer to their own files from those of the Zillah or city Courts, and try suits exceeding Rs. 1,000 in value or amount, when from pressure of business in the lower Courts it appeared that they could be so tried more conveniently and expeditiously.[2] In 1829 the powers of the Courts of Circuit were transferred to the newly-created Commissioners of Revenue and Circuit ; and the powers and authority of the Judges of the Provincial Courts in their capcity of Judges of Circuit ceased.[3] The Law Officers of these Courts were abolished in the same year.[4] Regulation V of 1831 made wholly new provisions for the administration of civil justice ; and the Governor-General in Council was thereby empowered to introduce its provisions by an order in Council into any district into which he deemed their introduction proper. From the date fixed in such order of Council for the operation of the Regulation in such district, the Provincial Court was to cease to receive original suits and appeals. Finally, the Governor-Generál in Council was empowered by Regulation II of 1833 to abolish any Provincial Court, as soon as the provisions of Regulation V of 1831 had been introduced into all the districts constituting the jurisdiction of such Court. Effect was almost immediately given to this power, and the Provincial Courts ceased to exist.

§ 211.—In 1794 Zillah and City Judges were empowered to refer to their Registrars[5] for trial and decision suits for money or personal property not exceeding in amount or value two hundred sicca rupees ; or for *malguzari* (revenue-paying) land,

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[1]Sections 2 and 3, Regulation XIII of 1808. By section 2 of Regulation XIX of 1817, the jurisdiction of City and Zillah Judges was raised to Rs. 1,000, the plaintiffs in suits between Rs. 5,000 and 10,000 being allowed the option of instituting their cases in the Courts of these Judges or in the Provincial Courts. When the Provincial Courts were abolished, the original jurisdiction of the Zillah and City Judges was extended to all suits without limit of value—see clause 3, section 27, Regulation V of 1831.

[2]Section 3, Regulation XXV of 1814.

[3]Sections 3 and 5, Regulation I of 1829.

[4]Section 7, Regulation III of 1829.

[5]These Registrars, as also the Registrars of the Sádr Díwání and Nizamát Adálat, and of the Provincial Courts of Appeal and Circuit, were Covenanted Civil Servants, and their offices afforded excellent training for the higher office of a Judge. They were the chief minis-

the annual produce of which did not exceed the same amount; or for lakhiráj land, the annual produce of which did not exceed twenty rupees. In cases for money or personal property not exceeding twenty-five sicca rupees in amount or value, the decision of the Registrar was final, subject to revision by the Judge. In all other cases decided by him, an appeal lay to the Provincial Court of Appeal,[1] but in the following year this appeal was directed to lie to the Zillah or City Judge,[2] whose decision was declared final.[3] In 1800 Zillah and City Judges were empowered to refer to their Registrars appeals from the decisions of Native Commissioners, in which the property in dispute did not exceed twenty-five sicca rupees; and the decrees of the Registrars thereupon were final,[4] but this appellate jurisdiction was taken away[5] in 1803, the jurisdiction of Registrars to try original case referred to them by the Judges being at the same time extended to suits for money or other personal property not exceeding five hundred sicca rupees in amount or value; for *malguzarí* land, the annual produce of which did not exceed the same amount; for lakhiráj land, the annual produce of which did not exceed fifty sicca rupees; and for other real property, the computed value of which did not exceed five hundred sicca rupees.[6]

§ 212.—In 1814 the Governor-General in Council was empowered to invest Registrars of tried ability in special cases with jurisdiction to try such appeals from Munsífs or Sádr Amíns, or original suits exceeding five hundred rupees in value or amount, as might be referred to them by the Zillah and City Judges. Their decisions on appeal were final unless the Zillah or City Judges saw reason to admit a second or special appeal. Their decrees in original suits so referred and

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terial officers of the Courts to which they were attached, and also exercised minor judicial functions. The Registrar of the Sádr Court was empowered to take evidence when directed to do so by the Court, and discharged other important functions, acting, for example, as Secretary to the Court in the exercise of its important administrative powers; and see section 1 of Act XVII of 1841.

[1]Sections 3—7, Regulation VIII of 1794.

[2]Section 3, Regulation XXXVI of 1795.

[3]Section 4, Regulation XXXVI of 1795.

[4]Section 2, Regulation III of 1800.

[5]Clause 4, section 6, Regulation XLIX of 1803.

[6]Clause I, *id.*

tried were appealable to the Provincial Courts.[1] In 1821 Registrars stationed at places other than the headquarters of the Court of the Zillah or City Judge were empowered to receive original suits or appeals such as might be referred to them under the provisions just noticed.[2] Judges and Magistrates were by Regulation XI of 1824 empowered to depute their Registrars, Assistants or other Covenanted servants subordinate to them to make local investigations for the purpose of determining boundary disputes, contested rights of possession or other matters connected with pending civil suits or subjects of inquiry in the criminal Court. Section 2, Regulation VIII of 1794, and the corresponding enactments,[3] which authorized the reference of civil suits for trial to the Registrars of the Zillah and City Courts, were repealed by clause 1, section 29, Regulation VII of 1831; and the Registrars' Courts were thus in effect abolished.[4]

§ 213.—We have seen that the offices of Judge and Magistrate were united in the same person under the system of 1793. In 1795 this system was extended to the province of Benares,—three Zillah and one City Courts being established therein.[5] In the same year the jurisdiction of the Burdwan Court was divided, and a new Court established at Húghlí.[6] In 1803, the system was extended to the provinces ceded by the Nawáb Vizier, and seven Zillah Courts were constituted in those provinces.[7] In 1810 a permissive Regulation was passed, under the provisions of which the Governor-General was empowered to appoint a person other than the Judge of the Zillah or City to hold the office of Magistrate, whenever it was considered expedient to make such an appointment: and also to invest the Magistrate of any Zillah or City with a general concurrent authority as Joint Magistrate in

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[1]Section 9 of Regulation XXIV of 1814; and see section 9 of Regulation II of 1821, and Regulation III of 1824.

[2]Section II of Regulation II of 1821. Section 14 of the same Regulation abolished the office of Registrar of the Provincial Courts of Appeal and Circuit.

[3]So in the original, but the draughtsman's work has not been done very accurately. Section 2 of Regulation VIII of 1794 is merely a repealing section, and the enacting provisions are contained in the sections that follow, and in later Regulations.

[4]It was only in 1871 that the law relating to the office (Regulation XIII of 1793) was repealed.

[5]Regulation VII of 1795.

[6]Section 7 of Regulation XXXVI of 1795.

[7]Regulation II and VI of 1803.

any contiguous or other jurisdiction or in any part thereof.[1] In 1821 a further permissive Regulation was passed, empowering the Governor-General in Council to invest a Collector with the powers of a Magistrate or Joint Magistrate : and to invest a Magistrate, Joint or Assistant Magistrate with the powers or any of the powers of a Collector.[2] Collectorships or parts of Collectorships having been placed in charge of Zillah and City Judges and of Registrars,—doubts arose as to the legality of this arrangement ; and a Regulation (V) was passed in 1825 to validate what had been done, and to empower the Governor-General to make similar arrangements thereafter, when expedient.

§ 214.—In 1818, Magistrates were vested with power to pass in certain classes of cases a sentence of imprisonment with hard labour for a period not exceeding two years, and of corporal punishment not exceeding thirty stripes of a rattan.[3] In 1824, the Magistrates and Joint Magistrates were vested with the summary jurisdiction which had previously been exercised by the Civil Courts in the case of disputes as to land or the right to use water, and they were empowered to maintain possession, leaving persons who alleged a title without

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[1]Regulation XVI of 1810, which also provided for the office and duties of Assistant Magistrate. This was the origin of the term "Joint Magistrate," which has now no real significance beyond designating two grades of Covenanted Servants with reference to the salaries drawn by those who are placed therein. When the offices of Magistrate and Collector were united under Lord William Bentinck's administration (1831), it was soon found that the Collector-Magistrate was unable to cope with the judicial portion of his duties, and accordingly Joint Magistrates and Deputy Collectors on Rs. 1,000 per mensem, and Head Assistants on a salary of Rs. 700 per mensem, were appointed in order to render more efficient aid than could be given by assistants vested with such powers as could be conferred under the Regulations then in force. Head Assistants were turned into Joint Magistrates of the second grade by a Government Order of the 16th August 1836. When the offices of Collector and Magistrate were separated in 1837, the first grade Joint Magistrates became Magistrates, but their salaries were in 1842 reduced to Rs. 900 per mensem. When the same offices were again united in 1859, they again became Joint Magistrates. The Code of Criminal Procedure makes no mention of Joint or Assistant Magistrates ; and save as indicating the grades of Covenanted Civilians to which grades certain salaries are attached, the terms are now obsolete. As to the powers of Assistant Magistrates under the old law, see also Regulation XIII of 1797 and Regulation III of 1821.

[2]Regulation IV of 1821, which also provided for the duties of Assistant Collectors.

[3]Regulation XII of 1818. This is the existing limit of their powers.

possession to enforce such title by a regular suit in the Civil Court.[1] In 1829 it was declared competent to the Governor-General in Council to direct any Judge of appeal or other Judge, not being the Magistrate by whom the commitments had been made, to hold the Sessions of gaol delivery for any City or Zillah with the powers and authority of a Court of Circuit.[2] Ten months afterwards the Governor-General in Council was further empowered to invest, by an order in Council, the Zillah or City Judges with full powers to conduct the duties of the Sessions.[3] The Sessions Judges so appointed had, however, no jurisdiction to hear appeals from Magistrates, these appeals still lying to the Commissioners, to whom had been transferred the powers of the Courts of Circuit.[4] As the office of Sessions Judge and Magistrate still continued to be united in the same person, it was absolutely necessary that the appellate authority should rest elsewhere. The inconvenience of the same class of officers exercising the powers of Committing Magistrates and Sessions Judges, the latter being unable to try cases committed by themselves in the former capacity, caused considerable obstruction; and, moreover, the united work of Sessions and of the Civil Court left little leisure for the performance of magisterial duties. To remedy these difficulties, the provisions of Regulation IV of 1821 were called into operation, and the exercise of the functions of Magistrate were transferred to the Collector.

§ 215.—The transfer of Sessions duties from the Commissioner to the Judge was at first intended to be made only in exceptional cases when the pressure of business devolving upon a Commissioner rendered this course advisable; but the exception soon became the rule, the Commissioners being very generally unable to manage the Sessions work in addition to

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[1]Regulation XV of 1824, which was re-enacted in an amended form by Act IV of 1840, the provisions of which were incorporated and still exist in the Code of Criminal Procedure—see Chapter XL, sections 530—535.

[2]Clause 2, section 5, Regulation I of 1829.

[3]Section 2, Regulation VII of 1831. One result of transferring the Sessions work to the Zillah and City Judges was that, in some heavy districts, they became unable to cope with the civil work: and the occasional appointment of Additional Judges was therefore provided for by Regulation VIII of 1833. Assistant Judgeships had been previously created by Regulation XLIX of 1803, and abolished by Regulation XXIV of 1814.

[4]Section 8, *id.*

the other duties of their office. In 1835 it was made competent to the Governors of the Presidencies of Fort William in Bengal and of Agra respectively by an order under the signature of the Secretary to Government in the Judicial Department to transfer any part, or the whole, of the duties connected with criminal justice from any Commissioner of Circuit to any Sessions Judge, and to define the powers which should be exercised by each respectively.[1] What was intended to be meant by "duties connected with criminal justice" is not very clear, but that it did not include the hearing of appeals from Magistrates would appear from the fact that the power of receiving and trying appeals from the orders of the Zillah or City Magistrates or Joint Magistrates, whether such orders were passed in a criminal trial or in any other judicial proceeding, was afterwards conferred on Sessions Judges in so many words by section 5, Act XXIV of 1837. It will thus appear that the jurisdiction of the Zillah and City Judges as Sessions Judges was created in a curiously indirect manner and depended upon four fragments of enactments, one of which required an order in Council in order to give effect to its provisions. In 1871, there was the gravest reason to believe that the requirements of the law had not been complied with, and an Act was passed to validate all previous appointments and provide for the future appointment of Sessions Judges and Additional Sessions Judges.[2] The powers and duties of Sessions Judges are now regulated by the provisions of the Code of Criminal Procedure,[3] which also provides for the appointment of Additional or Joint[4] Sessions Judges, and Assistant[5] Sessions Judges.[6]

§ 216.—The union of the offices of Collector and Magistrate, which was effected in 1831, lasted for a few years only. A large amount of additional work was just at that time thrown upon Collectors by the resumption proceedings then undertaken and vigourously carried on: and the duties of the Magistrate's office were in consequence neglected. In 1837 the Governor-General, Lord Auckland, procured the sanction

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[1]Act VII of 1835.
[2]Act XIX of 1871.
[3]Act X of 1872.
[4]Section 17, *id.*
[5]Section 18, *id.*
[6]The powers and duties of Zillah and City Judges as regards the administration of civil justice appear sufficiently from what precedes as to the Sádr Díwání Adálat and Provincial Courts of Appeal, and from what follows as to Native Judicial Officers.

of the Court of Directors to the separation of the two offices which was gradually effected in the course of the following eight years. In consequence of the small salaries allowed to the Magistrates,[1] the office fell into the hands of the junior and more inexperienced members of the Service, and the effect upon the administration of justice was what might naturally have been expected. After careful consideration and much discussion, the offices of Collector and Magistrate of the District were again united in 1859:[2] and the arrangement has continued up to the present. The powers and duties of the Magistrate of the District and of other Magistrates (except the Police Magistrates of Calcutta) are now regulated by the Code of Criminal Procedure.

§ 217.—The history of the Native Judicial Service[3] is one of great interest and, within the last few years especially, of

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[1]In Lower Bengal, of which especially I speak above, the Magistrate was paid Rs. 900 per mensem, while the Collector received Rs. 1,900 or 1,500, according to the grade to which he belonged.

[2]Despatch No. 15 of 14th April 1859. Mr. J. Fitzjames Stephen, in his *Minute on the Administration of Justice in British India* (No. 89 of Selections from the Records of the Government of India, Home Department, 1872), was of opinion that the maintenance of the position of the District Officers (Collector-Magistrates) is essential to the maintenance of our rule: and that, in order to maintain their position, judicial power in criminal matters must be left in their hands. "The exercise of criminal jurisdiction," he observes, "is, both in theory and in fact, the most distinctive and most easily and generally recognised mark of sovereign power. All the world over, the man who can punish is the ruler." I do not say that his view of what is expedient for India is wrong; but it may be well to consider that the District Magistrate does not in fact exercise this criminal jurisdiction. In the Lower Provinces he has not leisure to do so, and its exercise in practice devolves upon the Joint Magistrate. Again, the Nizámat or right to administer criminal justice was not given to us at first; and it remained in the hands of the Native Government, while we, notwithstanding, exercised the real sovereign power.

[3]In connection with what has gone before and with what follows, I may here refer to Regulation IX of 1833 by which the office of Deputy Collector open to natives of India of any class or religious persuasion, was created under the administration of Lord William Bentinck. In 1843 was passed an Act (XV) entitled "An Act for the more extensive employment of Uncovenanted Agency in the Judicial Department," by which the office of Deputy Magistrate was created. Under the provisions of these two enactments the services of natives have been largely utilized. The number of persons holding the appointment of Deputy Magistrate and Deputy Collector in the Lower Provinces on salaries ranging from Rs. 200 to Rs. 700 per mensem was on the 1st April 1875, *one hundred and eighty-three*, of whom 38 bear European names, the rest being natives.

remarkable progress. The provisions of Regulation XL of 1793[1] were extended to Benares in 1795.[2] The Judge of Chittagong was in 1797 empowered to refer to Native Commissioners, who were to be denominated *Commissioners of Land Suits*, cases for landed property, the annual value of which did not exceed, if malguzarí land, fifty sicca rupees; and if lakhiráj, five sicca rupees. In dealing with these suits, the Commissioners were to be guided by the rules contained in Regulation XL of 1793, and by the further rule that in cases of inheritance of, or succession to, landed property, the Mahomadan laws with respect to Mahomadans, and the Hindú laws with regard to Hindús, were to regulate the decision.[3] Appeals lay from the decisions of the Native Commissioners to the Zillah or City Judges, who were in 1800 empowered to refer to their Registrars such of these appeals as did not exceed twenty-five sicca rupees in value.[4]

§ 218.—Rules similar to those contained in Regulation XL of 1793 were enacted by Regulation XVI of 1803 for the provinces ceded by the Nawab Vizier; and provision was at the same time made for the appointment of Head Native Commissioners, to be denominated *Sádr Amíns*, and who were to have jurisdiction to try, on reference by the Zillah or City Judge, suits for personal property not exceeding in value one hundred sicca rupees; or for the property or possession of land, the annual value of which did not exceed, if *malguzarí*, one hundred, and, if *lakhiráj*, twenty sicca rupees; or for any other description of real property, the computed value of which did not exceed one hundred sicca rupees. Their decisions were to be regulated in cases of inheritance of, or succession to, landed property, by the Mahomadan law with respect to Mahomadans, and by the Hindú law with regard to Hindús.[5] Head Commissioners were to be nominated by the Judges and approved by the Sádr Díwání Adálat.[6] Native Commissioners, to be vested with the powers of Munsifs, were to be appointed in the same way. In making nominations to

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[1] *Ante.* § 201. It will be remembered that the jurisdiction conferred by Regulation XL of 1793 extended only to suits for money and *personal* property up to the limit of 50 sicca rupees.

[2] Regulation XXXI of 1795.

[3] Regulation XVIII of 1797.

[4] Regulation III of 1800.

[5] Clause 9, section 26, Regulation XVI of 1803.

[6] Clause 2, *id.*

both offices, the Judges were not to be restricted to any particular class of persons, but were to be careful to select "persons of good character and known ability, as well as duly qualified by their education and past employments to discharge satisfactorily the trust reposed in them." The Native Commissioners or Munsifs so appointed were empowered to receive, try and determine all suits preferred to them against any native inhabitant of their respective jurisdictions for money or other personal property not exceeding in amount or value the sum of fifty sicca rupees, save and except claims for personal damages which were not to be cognizable by these officers. The local jurisdiction of the Munsif was to be the same as the Police jurisdiction in which he was empowered to officiate; and he was to hold his Court at the principal town, bazár or ganj within such jurisdiction. These Sádr Amíns and Munsifs were not to be removed from their offices without sufficient cause proved to the satisfaction of the Sádr Díwání Adalát. Sádr Amíns were not to be appointed as a matter of course in all zillahs, but only in those districts in which there was pressure of work. These provisions applied only to the provinces ceded by the Nawab Vizier; but similar provisions were made almost immediately after for Bengal, Bahár, Orissa, and Benares by Regulation XLIX of 1803.

§ 219.—In 1805, the Hindú and Mahomadan Law officers were created Sádr Amíns by virtue of their offices; and the Sádr Díwání Adálat was empowered to appoint, in addition, two or more Sádr Amíns, when such course appeared expedient on consideration of the number of civil causes depending in a Zillah or City Court.[1] In 1810, Zillah and City Judges were empowered to refer appeals from Native Commissioners "for investigation and decision" to Sádr Amíns or Law Officers exercising the powers of Sádr Amíns.[2] In 1814, the law relating to Sádr Amíns and Munsifs was amended and consolidated by Regulation XXIII of that year. The Commissions empowering to act as referees and arbitrators were withdrawn, and Munsifs were not to admit new cases for arbitration except under the general rules of procedure then in force. Munsifs were now invested with jurisdiction to receive, try and determine all suits preferred to them against any native inhabitant of their jurisdiction for money or other

[1]Regulation XV of 1805.
[2]Clause 2, section 9, Regulation XIII of 1810.

personal property not exceeding in amount or value sixty-four sicca rupees, provided that the cause of action had arisen within one year previous to the institution of the suit, and that the claim included the whole amount of the demand arising from the cause of action, and provided also that the suit was not for damages for alleged personal injuries. The Chittagong Munsifs were still vested with power to try suits for landed property, the limits of this jurisdiction being extended to sixty-four sicca rupees.[1] Munsifs were now for the first time empowered to impose fines for contempt of Court. They were not, however, to realize fines so imposed, but were to report them to the Judge, who might remit, modify, or confirm them. Munsifs were still prohibited from executing their own decrees, which were to be executed from the Judges' Court. They were to furnish copies of their decrees to the parties, who were at liberty to appeal to the Judge within thirty days computed from the date of the copy being furnished or tendered.[2] Judges were empowered to employ Munsifs in the investigation of questions respecting local rights and usages; in giving possession of real property under decrees;

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[1]This special jurisdiction was given to Munsifs in the Chittagong District in consequence of landed property being "for the most part distributed into very small portions, amongst the numerous proprietors of which and their tenants so many disputes continually" arose "regarding the property or boundaries of their respective tenures that the unremitting assiduity of the Zillah Judge and his Registrar" had "been found insufficient to bring them to an early trial and decision."—Preamble to Regulation XVIII of 1797. The same state of things still continues, as the author knows from his experience of the district.

[2]The date of furnishing or tendering was to be endorsed on the copy and Munsifs falsifying or misstating this date with the view of defeating the right of appeal were to be dismissed and fined. Judges were empowered to impose upon Munsifs fines not exceeding twenty rupees for misconduct or neglect of duty not requiring suspension or dismissal. It was further considered necessary strictly to prohibit Munsifs from maltreating witnesses or allowing the parties or their agents to instruct or intimidate them. Leading question or questions suggesting a particular answer were generally forbidden. No distinction was drawn between examination-in-chief and cross-examination, and questions with regard to the *personal character* of the parties were to be *avoided as much as possible.* There are many similar curiosities of legislation to be found throughout the Regulations, which, it will be remembered, were drawn by unprofessional hands. For the scientific mode of dealing with the evil, against which the last provision was directed, see sections 148—150 of the Evidence Act, and the remarks at pages 486-487 of the Author's *Law of Evidence in British India.*

in the sale of personal property in execution; in ascertaining the sufficiency of securities and the indigence or otherwise of persons suing *in formâ pauperis*.[1] The approval of persons nominated by the Zillah and City Judges to the offices of Sádr Amín and Munsif was transferred from the Sádr Díwání Adálat to the Provincial Courts.

§ 220.—The Hindú and Mahomadan Law officers were still to be *ex-officio* Sádr Amíns: and the Judge were generally to refer cases involving Hindú law to the Hindú Law Officer, and cases involving Mahomadan law to the Mahomadan Law Officer. The original jurisdiction of Sádr Amíns was extended to suits for money or other personal property not exceeding *one hundred and fifty* sicca rupees in amount or value, or for the property or possession of land or other real property up to the same amount calculated according to the Stamp Law then in force.[2] The Judges were authorized to refer to Sádr Amíns such appeals from the decision of Munsifs as they were themselves unable to try and determine with sufficient despatch. The decisions of the Sádr Amíns on appeal were final unless the Judges saw fit to admit a special appeal. Whenever, in the trial of regular suits by the Zillah or City Judges or in miscellaneous cases, the *adjustment* of accounts regarding the execution of decrees, and mercantile or revenue transactions, or the *investigation* of disputes between landlord and tenant or of other special matters of account, fact or usage was requisite, Judges, in order to save their own time, were authorized to direct such adjustment or investigation to be made by any Sádr Amín subordinate to them.[3]

§ 221.—The increase in the work of the Courts during the seven years which followed these changes rendered further measures necessary in order to relieve the Zillah and City Judges. Provision was accordingly made in 1821 for increasing the number of Munsifs, one for each thanah not being found sufficient. At the same time the monetary limits of

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[1]Munsifs were also employed to sell property distrained for rent. The above duties were afterwards generally transferred to the Amíns appointed under Act XII of 1856. Even in 1814 Amíns were employed; and Judges were directed to resort to their employment, when the result of occupying the Munsifs too much with the above miscellaneous duties would be to interfere materially with the early decision of suits.

[2]Section 14, Regulation I of 1814.

[3]Taken *verbatim* from clause 1, section 76, Regulation XXIII of 1814.

the jurisdiction of Munsifs was raised to *one hundred and fifty* rupees, and that of Sádar Amíns to *five hundred* rupees.[1] Judges were also empowered to refer to their Registrars and Sádr Amíns applications for the execution of decrees of Sádr Amíns and Munsifs. Further relief was given in the same year by empowering the Judges in their capacity of Magistrates to refer petty criminal cases to the Law Officers and Sádr Amíns.[2] The original jurisdiction of Sádr Amíns was further raised to *one thousand* rupees in 1827, and they were for the first time empowered to hear cases in which British European subjects, European foreigners or Americans were parties.[3].

§ 222.—The law relating to Native Judicial Officers, in common with the other portions of the law of the judiciary system, underwent important changes in 1831. The jurisdiction of Munsifs was now extended to suits for the property or possession of land or other real property with the exception of land held exempt from the payment of revenue[4] and the monetary limit of all suits cognizable by them was raised to *three hundred* rupees. The special rules applicable to Chittagong Munsifs were repealed; and, instead thereof, it was generally provided for the guidance of all Munsifs that in cases of inheritance of, and succession to, landed property, the Mahomadan law with respect to Mahomadans, and the Hindú law with regard to Hindús, should regulate the decision. Where the parties were of different religious persuasions, the decision was to be regulated by the law of the defendant, but only in cases in which the defendant was a Hindú or a Mahomadan. In cases in which these rules could not apply, the Munsifs were to act according to justice, equity and good conscience. Suits cognizable by Munsifs were ordinarily to be instituted in their Courts, but Judges might receive and refer such suits. Munsifs were now allowed to receive applications for the execution of their own decrees; but were to forward them to the Judge, who might direct them to execute

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[1]Sections 2, 3 and 5 of Regulation II of 1821.

[2]Sections 3 and 4 of Regulation III of 1821.

[3]Regulation IV of 1827. The power to hear these suits was, however, again taken away by clause 2, section 15, Regulation V of 1831, but restored by Act XI of 1836.

[4]The prohibition against trying suits for damages on account of personal injuries still, however, continued. The proviso to clause 2, section 5, Regulation V of 1831, which was not repealed till thirty years after, when it was repealed by Act X of 1861.

them, or have them executed by his own officers. Munsifs were no longer to be paid by fees, but by salaries fixed by the Governor-General in Council.[1]

§ 223.—The abolition of the Provincial Courts, the Judges of which had appointed the Sádr Amíns and Munsifs on the nomination of the Zillah and City Judges, rendered other provisions necessary for the exercise of this patronage, and it was enacted that its exercise should henceforth be regulated in such manner as the Governor-General in Council might be pleased to direct.[2] The Law Officers of the Zillah and City Courts were no longer to be *ex-officio* Sádr Amíns, but were to be, like other individuals, eligible to the office. Judges were not in future to transfer Munsifi appeals to Sádr Amíns for hearing. The office of Sádr Amín was thus somewhat reduced in importance ; but this was compensated by the creation of a new office, that of Principal Sádr Amín, which (together with that of Munsif and Sádr Amín) was declared to be open to natives of India of any class or religious persuasion.[3] Appointments to the office were to be made by the Governor-General, who was also to fix the monthly allowances of those appointed. Principal Sádr Amíns were vested with original jurisdiction in suits for money or personal property, or for the property or possession of land or other real property, the amount or value[4] of which did not exceed *five thousand* rupees.[5] Judges retaining such cases on their own files were to record their reasons for doing so. Principal Sádr Amíns were empowered to execute their own decrees, an appeal lying to the Judge from their orders passed in execution-proceedings. When a Judge's file was so heavy that it was impracticable for him to dispose of all the pending appeals with reasonable despatch, he was to report to the Sádr Díwání Adálat, who might authorize him to refer a special number of appeal to his Principal Sádr Amín. The petty criminal jurisdiction given to Sádr Amíns by section 3, Regulation III of 1821, was conferred on Principal Sádr

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[1]Sections 5, 6, 7, 11 and 12 of Regulation V of 1831.

[2]Sections 13, 14 and 16 of Regulation V of 1831.

[3]Act VIII of 1836 further declares that no person should be, by reason of place of birth or by reason of descent, incapable of holding these offices.

[4]Calculated according to the rules in No. 8, Schedule B, referred to in section 17, Regulation X of 1829.

[5]Sections 17 and 18 of Regulation V of 1831.

Amíns also: and Magistrates were empowered to refer to both officers for investigation criminal cases beyond their jurisdiction to try. These officers were not, however, authorized to commit to the Sessions. A Judge was empowered upon urgent necessity to suspend a Principal Sádr Amín, Sádr Amín or Munsif. When Commissioner and the Judge differed as to the propriety of removing any of them, they were both to send their opinions to the Sádr Díwání Adálat. The Commissioner might recommend a removal, when the Judge did not take the initiative. Principal Sádr Amíns and Sádr Amíns could not be removed from office without the sanction of the Governor-General. Munsifs could be removed by the Sádr Díwání Adálat.[1]

§ 224.—By Act XXV of 1837, Judges were empowered to refer to Principal Sádr Amíns original suits of any amount or value; and they were further authorized, with the sanction of the Sádr Díwání Adálat, to refer any civil proceedings, miscellaneous or summary.[2] Orders passed by Principal Sádr Amíns in such proceedings were first appealable to the Judge, and then specially to the Sádr Díwání Adálat. Decrees in original cases up to five thousand rupees were first appealable to the Judge, and then specially to the Sádar Díwání Adálat.[3] Decrees in suits above this amount were appealable direct to the Sádár Díwání Adálat.[4] In 1845 Munsifs were relieved of performing the duties of Nazirs, and were authorized to appoint Nazirs on their establishments.[5] In 1847 the rule empowering Judges to fine Munsifs and Sádr Amíns was

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[1]Section 16, Regulation V of 1831. See for the existing law sections 31—34, Act VI of 1871. A Subordinate Judge can be removed only by Government; but the High Court can suspend him, when it sees urgent necessity for so doing. A Munsif may be removed by the Government or the High Court, and may be suspended by the High Court, or, when he sees urgent necessity, by the District Judge. The English Committee of the High Court may remove a Munsif, and a Division Branch cannot reconsider, review or set aside their order.—*In the matter of the petition of Harish Chandra Mittra*, X. B. L. R., 79; nor has the Judicial Committee of the Privy Council jurisdiction to interfere—*In the matter of Sri Mohan Ghatak*, XIII Moo. Ind. Ap., 343. Subordinate Judges are now appointed by Government. Munsifs are nominated by the High Court and appointed by Government—Sections 5-6 *id.*

[2]See now section 27, Act VI of 1871.

[3]See now section 28, *id.*

[4]This is still the law, see section 22, *id.*

[5]Act XIV of 1845.

repealed,[1] as no longer adapted to these officers "in the more elevated judicial position" then occupied by them. In 1852 the rules of procedure for the trial of original civil suits in the Courts of Judges and Principal Sádr Amíns were extended in their entirety to the Court of Sádr Amíns and Munsifs, who were also for the first time empowered to try suits in which vakils or officers of their Courts were parties.[2] In 1868, the law relating to Native Judges in the Lower and North-Western Provinces was again amended and consolidated by Act XVI of that year. The principal changes made by this Act were that the office of Sádr Amín was abolished; the designation of "Subordinate Judge" was substituted for that of "Principal Sádr Amín;" and the jurisdiction of Munsifs was extended to all original suits cognizable by the Civil Courts of which the subject-matter does not exceed in amount or value *one thousand* rupees. Act XVI of 1868 was amended by Act II of 1870, and both these Acts were repealed by the *Bengal Civil Courts Act*, VI of 1871, which has finally amended and consolidated the law relating to the District and Subordinate Civil Courts in the territories respectively under the Governments of the Lieutenant-Governors of the Lower and North-Western Provinces of the Presidency of Fort William in Bengal.

§ 225.—We have seen that, up to 1793, all questions between Government and the landholders respecting the assessment and collections of the public revenue and disputed claims between the latter and their raiyats, or other persons concerned in the collection of their rents, were cognizable in the Courts of Mál Adálat or Revenue Courts:[3] and that, in that year, jurisdiction in this class of cases was transferred to the Civil Courts, which were empowered to take cognizance of suits relating to "land-rents" and "revenues."[4] In the following year it was enacted that in causes concerning rent or revenue or other matters previously cognizable in the Courts of Mál Adálat between proprietors of ands or farmers holding immediately of Government, and their dependent talúkdárs, under-farmers or raiyats; or between dependent talúkdárs and their under-farmers or raiyats; or between other persons concerned in the collection or payment of land-rents or

[1] Act XII of 1847.
[2] Act XXVI of 1852.
[3] Preamble to Regulation II of 1793.
[4] Section 8, Regulation III of 1793.

revenues either as principals or sureties, the Judge might refer to the Collector for his report any accounts, the adjustment of which might be necessary towards the decision of the suit. On receipt of the Collector's report, the Judge might either confirm, set aside or alter his adjustment of the accounts, or pass such decision respecting them as might to him appear proper.[1] The Civil Courts were directed by section 34 of Regulation XVII of 1793 to try all suits connected with the exercise of the powers of distraint conferred by that Regulation, previous to any other suits. They were further directed by section 22, Regulation III of 1794 to appropriate one or two or, if necessary, more days for the trial of suits relating to rent or revenue. The strictest observance of these rules was required by section 13, Regulation VII of 1799. Under the provisions of section 15 of the same Regulation, proprietors and farmers were empowered to arrest persons from whom arrears of rent were due which could not be realized by distraint; or they might petition the Zillah Judge for their arrest. If the defaulter, on being arrested, denied the arrear or any part of it, the Judge was to enter upon a *summary inquiry* into the merits of the demand by examining the vouchers and accounts of the parties, or he might refer the case to the Collector for adjustment and report. The summary judgment passed by the Judge, after completing his own enquiry or upon the report of the Collector, was not open to appeal, but persons considering themselves aggrieved thereby might institute a regular suit in the Civil Court to contest the result.[2]

§ 226.—The law of summary suits was somewhat modified in favour of the raiyats by Regulation V of 1812,[3] which provided that, when a tenant disputed the justice of his landlord's claim enforced by distraint, and gave security to contest such claim by suit in the Civil Court, the distraint was to be withdrawn. Persons unable to give security in time to save their property from sale were declared entitled to sue afterwards to contest the claim of rent, and to recover damages for the sale of their property. All suits instituted under these provisions were directed to be referred as soon as instituted to the Collectors for their report, and were to be decided on a summary inquiry under the provisions contained in Regulation VII

[1]Section 13, Regulation VIII of 1794, not repealed until the passing of Act VIII of 1868.

[2]Sections 17 and 18, Regulation VII of 1799.

[3]Sections 20 and 21 of Regulation V of 1812.

of 1799.[1] A strict adherence to this rule was, however, found to retard instead of expedite the decision of these cases ; and therefore, 1817, Judges were declared to be at liberty either to refer such suits to the Collectors, or themselves investigate them, or refer them for investigation to their Registrars.[2] Collectors were empowered in 1824 to hear, investigate, and *determine* summary suits referred to them by the Judges, to whom they were, however, to notify their decisions and return the records.[3] Finally in 1831, such parts of the Regulations[4] then in force as authorized Judges of the Zillah or City Courts to take cognizance of summary suits relating to arrears or exactions of rent, and to refer the same to the Collector for investigation and decision were repealed ; and it was enacted that such summary suits were to be preferred in the first instance to the Collectors of land-revenue, whose decisions were to be final, subject to being contested in a regular suit in the Civil Court.[5] If it were brought to the Collector's notice that a regular suit had been instituted in the Judge's Court repsecting any matter pending before him in a summary suit, he was to suspend proceedings and forward the record of the case to the Judge.

§ 227.—In 1859 the jurisdiction of the Civil Courts was wholly taken away,[6] and an exclusive jurisdiction given to the Collectors' Courts in the following cases, *viz.* : (1) suits for pattas kubulyats, and the determination of the rates of rent to be therein inserted ; (2) suits for damages on account of the illegal exaction of rent or of any unauthorized cess or impost, or on account of the refusal of receipts for rent paid, or on account of the extortion of rent by confinement or other duress ; (3) complaints of excessive demand of rent and claims to abatement of rent ; (4) suits for arrears of rent due on account

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[1]Sections 17 and 18, Regulation VII of 1799.

[2]*Section 13, Regulation XIX of 1817 ; and see section 9, Regulation* II of 1821.

[3]Sections 3 and 4, Regulation XIV of 1824.

[4]The following Regulations are expressly referred to to, *viz* :—VII of 1799, V of 1800, XVII of 1803, V of 1813, VII of 1813, XIX of 1817 and XIV of 1824.

[5]Sections 4 and 5, Regulation VIII of 1831. An apeal lay to the Commissioner on the ground of the irrelevancy of the Regulation to the particular case. Assistants were competent to try summary cases, if specially empowered.

[6]By Act X of 1859, section 1 of which repeals the law previously in force, which may be fully gathered from this section.

of land either *kherají* or *lakhiráj*, or on account of any rights of pasturage, forest rights, fisheries, or the like; (5) suits to eject raiyats or cancel leases for non-payment of rent or breach of contract; (6) suits to recover the occupancy or possession of any land, farm or tenure from which a raiyat, farmer or tenant had been ejected by the person entitled to the rent thereof; and (7) suits arising out of the exercise of the powers of distraint conferred by the Act. These provisions were objected to by high authority[1] on the ground that the jurisdiction of the regular Civil Courts was excluded in suits which might involve difficult questions of law and fact, with which such Courts were more competent to deal than the Collectors' Courts to which they were transferred. The soundness of these objections was proved by experience of the working of the Act in the Lower Provinces: and just ten years afterwards the jurisdiction taken away in 1859 was restored to the Civil Courts in these provinces by Act VIII of 1869 of the Bengal Council.[2] In the North-Western Provinces the Revenue Courts still continue to exercise an exclusive jurisdiction in cases of rent and revenue.[3]

§ 228.—The jurisdiction of the Mofussil Courts, Civil and Criminal, in respect of European British subjects, has been, from time to time, the source of much discussion, and has undergone considerable changes. In 1793 European British subjects were amenable to the Supreme Court alone for acts which rendered them liable to a criminal prosecution; and it was made the duty of Magistrates to inquire into charges against them and apprehend them if necessary. If the charge appeared proved in any particular case, the Magistrate was *to convey the offender under safe custody to one of the Judges*

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[1]Sir Charles Jackons and Mr. (now Sir Barnes) Peacock, afterwards Chief Justice of the Calcutta Supreme and High Court, and now one of the Judges of Her Majesty's Most Hon'ble Privy Council.

[2]Act VIII (B.C.) of 1869 has operation only in those districts to which it has been extended under the provisions of section 106. It has, however, been extended to all districts except those in Orissa—See Notification of 24th February 1870, published in the *Calcutta Gazette* of 2nd March 1870.

[3]See section 93 of the North-Western Provinces Rent Act, XVIII of 1873. It must be borne in mind that Revenue Officers in these provinces by reason of settlement experience and for other causes, are very much more qualified to deal with such cases, than Revenue Officers in the Lower Provinces.

*of the Supreme Court*,[1] reporting the circumstances for the information of the Nizámat Adálat. Europeans not British subjects were amenable, equally with natives, to the authority of the Magistrates and Courts of Circuit.[2] The 33 Geo. III, cap. 52, empowered the Governor-General in Council by Commissions under the seal of the Supreme Court to appoint Covenanted Servants or other British inhabitants to be Justices of the Peace: and accordingly Regulation II of 1796[3] was passed to provide rules for the *commitment* of European British subjects to the Supreme Court by Magistrates who had taken the oaths as Justices of the Peace. In order to take the oaths it was necessary to come down to the Presidency and appear before the Supreme Court; but it was afterwards enacted that the oaths might be taken before any Civil or Criminal Court, even though the officer therein presiding was not a Justice of the Peace.[4] By the 53 Geo. III, cap. 155, section 105, Magistrates of Districts[5] were empowered to try cases of assault, forcible entry or other injury accompanied by force not being felony, committed by British subjects on natives outside the Presidency towns and, in case of conviction, to inflict a fine not exceeding five hundred rupees. In default of payment or levy of the fine, the offender might be committed to gaol for a period not exceeding two months. The fine or any portion of it might be paid as compensation

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[1]Not being Justices of the Peace, Magistrates had at that time no power to commit.

[2]Section 19, Regulation IX of 1793; clause 1, section 2, Regulation II of 1796.

[3]In the Preamble to this Regulation in all the copies that I have examined, the 21 Geo. III, cap. 65, is quoted, doubtless by mistake for 33 Geo. III, cap. 52.

[4]53 Geo. III, cap. 155, section 112, and Act XVI of 1841. No oath is now necessary—see section 16, Act X of 1873. Further provision for the mode of proceeding in the case of European British subjects was made by Regulation XV of 1806.

[5]Justices of the Peace do not appear to have very generally exercised judicial powers as such in the Mofussil. They acted rather as Conservators of the Peace. The usual commission in England appoints them all jointly and severally to keep the peace in the country, and any two or more of them to inquire of and determine felonies and other misdemeanours in such country committed. Acts IV of 1835 and XXXII of 1838 were passed to empower one Justice to exercise in Calcutta, Bengal, Bahár and Orissa, the powers formerly appertaining to two Justices. The law relating to the appointment of Justices of the Peace was amended and consolidated by Act II of 1869, which contains the existing law on the subject.

to the aggrieved person. Convictions were removable by *certiorari* into the Courts of Oyer and Terminer and Gaol Delivery.

§ 229.—Act IV of 1843—reciting that there were many offences, which Mofussil Magistrates might take cognizance of either in their magesterial capacity under the regulations or as Justices of the Peace; that the appeal from their convictions in each capacity was subject to different rules ; and that the law of appeals from convictions under the 53 Geo. III, cap. 155, required amendment—enacted that an appeal from sentences passed by Justices of the Peace should lie to the same authority and under the same rules as appeals from sentences passed by Magistrates, and that cases so appealed should not be liable to revision by writ or *certiorari*, which might, however, be obtained in cases in which no such appeal had been had. Act VII of 1853 extended the provisions of the 53 Geo. III, cap. 155, section 105, and of Act IV of 1843 to cases of assault, forcible entry and other injuries not being felonies, committed by any British subject or other person against the person or property *of any person whatever*.[1] The first Code of Criminal Procedure enacted that no person, not a Justice of the Peace, should commit or hold to bail an European British subject to take his trial before the Supreme Court. Magistrates, not Justices, might, however, arrest or hold to bail such persons with a view to the complaint being investigated by a Justice of the Peace.[2] European British subjects are amenable to the provisions of the new Code of Criminal Procedure in all matters except giving security for good behaviour; and offences committed by them are to be inquired into and tried according to the provisions of Chapter VII of the Code, and not otherwise. Magistrates who are Magistrates of the First Class, Justices of the Peace and European British subjects, may inquire into complaints of any offence made against European British subjects ; and in the case of offences which they are competent to try may pass a sentence not exceeding three months' imprisonment, or fine up to one thousand rupees, or both. An appeal from such sentences lies either to the Court of Session or the High Court. In the case of offences

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[1]The Preamble recites that natives of India, resident in the East Indies, might be unable to obtain redress *by reason of their inability to prove their place of birth.*

[2]Sections 39—42 of Act XXV of 1861.

other than those punishable with death or transportation for life (in which cases the commitment must be to the High Court), European British subjects may be committed to the Court of Session; and Sessions Judges, being European British subjects, may pass a sentence not exceeding one year's imprisonment, or fine, or both.[1] An appeal from such sentences lies to the High Court.

§ 230.—Previous to 1833 British subjects, not in the service of the Crown or of the Company, were not allowed to reside in India more than ten miles from a Presidency town without a license.[2] In that year it was enacted by the 3 and 4 Wm. IV, cap. 85, ss. 81, 82 and 83, that natural-born subjects of the Crown might proceed *by sea* to any port or place having a Custom-house establishment within the territories of the Company and reside thereat, and proceed to, reside in, or pass through any part of such of the said territories as were under the Company's Government in the year

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[1]See sections 11, 71—88, 197, 274, 406, 435, 436 and 438 of Act X of 1872. "European British subjects" are defined by section 91. Several Acts had been passed by the Local Legislatures of Bengal, Madras, and Bombay, purporting to apply generally to all persons; and doubts having arisen as to the validity of the conviction and punishment of European British subjects thereunder, Act XXII of 1870 was passed to confirm such Acts and validate what had been done under them. This Act further provided that Acts of the Governor-General in Council, conferring summary jurisdiction over offences, shall be deemed to apply to European British subjects, though not expressly mentioned therein. The Statute 34 and 35 Vic. cap. 34 (29th June 1871), confirmed this Act, and gave the Local Legislatures power to confer jurisdiction over European British subjects on Magistrates, being Justices of the Peace, in all cases in which they can confer jurisdiction over natives.

[2]The power of excluding "interlopers" was granted by the Charter of Queen Elizabeth and was acknowledged by various Statutes—see 53 Geo. III, cap. 155, ss. 36, 37, 38, 39, 107, 108. Section 107 required British subjects allowed to reside more than ten miles from the Presidency to procure and deposit the certificate of such permission in the Civil Court of the district in which they were allowed to take up their residence. They were not allowed to hold land in the Mofussil—see sections 17 and 46 of Regulation II of 1793; section 17, Regulation V of 1795; Regulations XXXXIII of 1793, XLVIII of 1795, and XIX of 1803; and clause 1, section 17, Regulation VIII of 1805. Act IV of 1837 enacted that it should be lawful for any subject of the Crown to acquire and hold in perpetuity, or for any term of years, property in land or in any emoluments issuing out of land in any part of the territories of the East India Company, subject, however, to all rules which prescribe the manner in which such property shall be acquired and held by natives.

1800, or in part of the countries ceded by the Nawab of the Carnatic, of the provinces of Cuttack, and of the settlements of Singapore and Malacca, without any license whatever, provided that, on their arrival in any part of such territories from any port or place not within such territories, they were to make known in writing their names, places of destination, and objects of pursuit in India to the Chief Officer of Customs or other authorized officer. Such natural-born subjects were not, however, to enter these territories by land, or proceed to or reside at any place in the other territories not above-mentioned without a license; but the Governor-General in Council, with the previous consent of the Court of Directors, was authorized to declare other places open for residence without license to natural-born subjects of the Crown.

§ 231.—British subjects residing within the Company's territories were subject to all rules and regulations in force therein;[1] and residing, trading, or holding immoveable property at a distance of more than ten miles from the Presidencies, they were declared amenable to the Company's Courts in civil suits brought against them by natives. They had, however, a right of appeal to the Supreme Court in cases where an appeal would otherwise have lain to the Sádr Díwání Adálat.[2] In 1827 Sádr Amíns were allowed to try suits otherwise within their jurisdiction in which British European subjects, European foreigners or Americans were parties.[3] This power was, however, withdrawn in 1831.[4] Finally, in 1836 the above special right of appeal to the Supreme Court was taken away, and it was enacted that no person whatever should, by reason of place of birth, or by reason of descent, be, in any civil proceeding whatever, excepted from the jurisdiction of the Courts of Sádr Díwání Adálat, of the Zillah and City Judges, of the Principal Sádr Amíns and the Sádr Amíns in the territories subject to the Presidency of Fort William in Bengal.[5]

§ 232.—By the first Judicial Regulation passed on the 21st August 1772, the custom of levying *chauth, dassatra,*

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[1] See 53 Geo. III, cap. 155, s. 35.

[2] *Id.*, s. 107.

[3] Regulation IV of 1827.

[4] Clause 2, section 15, Regulation V of 1831.

[5] Act XI of 1836

*pachattra*[1] or any other fee or commission on the money recovered by means of the Courts, or *itluk*[2] on the decision of causes was absolutely and for ever[3] abolished. It was, however, soon discovered that it was possible to make justice too cheap; and that the result of abolishing all fees was to encourage groundless and litigious suits. Accordingly, by Regulation XXXVIII of 1795, fees were imposed on the *institution and trial* of suits as "the best mode of putting a stop to the abuse of the ready means afforded to individuals of availing themselves of the exercise of the laws, without obstructing the bringing forward of just claims." The institution fees in cases tried by Registrars and Native Commissioners were paid to them "as a compensation for

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[1] A fourth part, tenth part, fifth part, respectively of the property recovered.

[2] Literally "liberating," "setting free," but applied to the office for summonses, fees on their delivery, fees paid by suitors on the decision of their causes.

[3] The Indian Legislators of those days were very fond of binding posterity. It must, however, be borne in mind that the members of the Company's Government were new to legislation and state-craft. *Smith's Wealth of Nations* was not published until 1776, four years after the date of the above Regulation. Dr. Smith, though averse to making the Administration of Justice a source of revenue beyond the actual cost to the State of the necessary tribunals, was of opinion that this cost might be fairly defrayed by fees of Court. Later Political Economists have, however, contended that even to this extent a tax on justice is indefensible. Those who defend the tax to this extent argue that they may fairly be required to bear the expenses of the Administration of Justice who reap the benefit—*Qui sentit commodum sentire debet et onus.* But Bentham replied that they who have to go to law are the very persons who do not reap the benefit of good government, since the protection afforded by the law is so incomplete that they have to resort to the Courts to maintain their rights against infringement—the benefit is really reaped by those who enjoy such complete immunity from injury that they have never to resort to the Courts. It may, however, be said that as, in theory at least, the wrong-doer pays those fees in the end, the Courts are really supported by fines inflicted on wrong-doers. In India these fees are all recoverable from the wrong-doer, when he is able to pay them. When he is not, the person who seeks redress is the loser, and here the incidence of the tax is unfair. The Mahomadan system was free from this defect, as the fee was deducted only from the property recovered by the Court. It may be added that the utility of the imposition of Court-fees in repressing idle and harassing litigation has always been admitted and acted upon in India; but has not been much, if at all, considered in England. The attempt to make justice free of cost has been tried in India, and has not succeeded. It has never been tried in England, and there is no reason to think that the experiment would succeed there, if tried.

their trouble, and an indemnification for the expense which they may incur in the execution of the duties of their office." Fees in other cases and in appeals were to be carried to credit of Government, the provisions of this Regulation were partly superseded by Regulation VI of 1797,[1] which provided a new scale of fees on the institution and trial of suits, and also provided for levying a stamp-duty on certain law and other papers and documents and a percentage on the fees of pleaders. A "Superintendent of the stamps" was now appointed at Calcutta for the issue of "stamped" paper and for keeping the accounts of the same, and was made subordinate to the Board of Revenue. Similar provisions were made for the Ceded Provinces by Regulation XLIII of 1803, which also provided for petty complaints to the Magistrates being on "stamped" paper "in order to discourage the numerous petty complaints liable to be preferred from litigious or other improper motives."

§ 233.—The law for levying Judicial or Court Fees, and the law for imposing a stamp-duty on written instruments, were still further mixed together in Regulation I of 1814,[2] which first provided for the levy of court-fees by stamps. It was repealed by the consolidating and amending Regulation, X of 1829. This last Regulation was amended by Act XLI of 1858, and was repealed by Act XXXVI of 1860. The rule requiring a stamp upon petitions of complaint in petty criminal cases, first enacted in section 23, Regulation XLIII of 1803, was continued and extended in Regulations I of 1814[3] and X of 1829.[4] But Act XXXVI of 1860 exempted from stamp-duty "all petitions, applications, charges, and informations respecting crimes and offences."[5] Act XXXVI of 1860 was repealed by Act X of 1862, which further amended and consolidated the law relating to court fees and stamp duties, and also retained the particular exemption just

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[1]This Regulation repealed the Police Tax; and the Preamble expressly states that, in order to make up the consequent diminution of revenue, the fees on the institution and trial of suits were increased, and the stamp duties imposed.

[2]The Preamble to this Regulation also recites the policy of raising a revenue for the support of the State by means of stamps on. . . . instruments and on pleadings filed in the Courts of Judicature.

[3]Section 18.

[4]Para. 7, Schedule B. No stamp was required for complaints of non-bailable offences.

[5]Para. 5, Schedule B.

noticed. This latter Act was amended by Act XXVI of 1867, which generally increased the scale of court-fees, and again imposed a fee upon petitions or applications presented to Criminal Courts, and containing complaints "of the offence of wrongful confinement or wrongful restraint, or of any offence other than an offence for which police officers may arrest without warrant, as specified in column 3 of the schedule annexed to the Code of Criminal Procedure." Finally, the law relating to the imposition of stamp duties on instruments and the law relating to the levy of fees in Courts of justice were separated—the former being incorporated in "The General Stamp Act," XVIII of 1869; and the latter being reproduced in "The Court Fees Act," VII of 1870, amended by Act XX of 1870.[1]

§ 234.—The law appertaining to the Courts of justice is either "*substantive*" or "*adjective*,"[2] and the law falling under each of these heads may again be considered with reference to (1) the Civil Courts, and (2) the Criminal Courts. The first rule of substantive civil law for the Courts in the mofussil is to be found in the 23rd section of the Judicial Regulations of the 21st August 1772, which directs that "in all suits regarding inheritance, marriage, caste, and other religious usages or institutions, the laws of the Koran, with respect to Mahomadans, and those of the Shaster with respect to Gentoos,[3] shall be invariably adhered to." For cases not falling within this rule, no provision was made. The same rule in the same words was repeated in the Judicial Regulations of the 11th April 1780; but the omission was now repaired by directing that the Superintendent of the Díwání

[1] In addition to the Regulations and Acts noticed above, the following may be mentioned as connected with this subject, *viz* :—Regulation LX of 1795, extending Regulation XXXVIII of 1795 to Benares : sections 7 and 8, Regulation V of 1798 : section 3, Regulation III of 1800 : section 27, Regulation VIII of 1805, extending Regulation XLIII to the Conquered Provinces and Bundlekhand : section 70, Regulation XXIII of 1814 : section 9, Regulation XXIV of 1814 : section 13, Regulation II of 1821 : Regulation XVI of 1824 : clause I, section 12, Regulation V of 1831 ( Munsifs no longer to be paid by fees) : Act XL and LI of 1860 : Acts XX and XXIV of 1862 and XXXII of 1863, relating to the Calcutta High Court : and Acts XVIII of 1865 and XV of 1868.

[2] Mr. Bentham used the phrase "*substantive law*" to designate that law which the Courts are established to administer as contradistinguished from the rules by which it is administered. These last, or the rules of procedure or practice, he termed "*adjective law.*"

[3] *Gentoo* derived from the Portuguese *gentio*—"a gentile," or "heathen" came to mean "a native of India," "a Hindú."

Adálat should, "in all points which have not been expressly provided for by these Regulations act discretionally, and according to the best of his judgment" (42nd section). In the Regulations of the 5th July 1781,[1] the rule as to Mahomadans and Gentoos was still retained;[2] but cases outside this rule were now provided for by directing that, "in all cases for which no specific directions are hereby given, the Judges do act according to justice, equity, and good conscience."[3] In the Regulations of the 27th June 1787 no change was made, except that the rule as to the applicability of Hindu and Mahomadan law was amended by the addition of the following words—"But that in cases of succession to *zemindáris*, *talúkdáris* and *chaudhrais*, the Judge do also ascertain whether they have been regulated by any general usage of the pargana where the disputed land is situated, or by any particular of the family suing, and do consider in his decision the weight due to the evidence on this head."[4]

§ 235.—This two-fold rule of substantive civil law was reproduced in the Regulations of 1793[5]—section 15 of Regulation IV of that year enacting that, "in suits regarding succession, inheritance, marriage and caste, and all religious usages and institutions, the Mahomadan laws with respect to Mahomadans, and the Hindú laws with regard to Hindús, are to be considered as the general rules by which the Judges are to form their decisions;"—and section 21 of Regulation III of the same year enacting that "in cases coming within the jurisdiction of the Zillah and City Courts for which no specific rule may exist, the Judges are to act according to justice, equity, and good conscience."

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[1] Drawn up by Sir Elijah Impey. See *ante*.

[2] With the addition of "Succession" before "inheritance". See the observations on the addition of this word in *the Secretary of State* v. *The Administrator-General of Bengal*, I. B. L. R. Or. Civ. 106.

[3] Section 60 for the Mofussil Courts of Díwání Adálat, and section 93 for the Sádr Díwání Adálat.

[4] These words were not reproduced in the Regulations of 1793; but see Regulations XI of 1793 and X of 1800.

[5] Regulation IV of 1793 is entitled "*A Regulation for receiving, trying, and deciding suits or complaints declared cognizable*" in the Zillah and City Courts, and is chiefly concerned with procedure. Regulation III of 1793 is entitled. "*A Regulation for extending and defining the jurisdiction of*" the same Courts. There is no Regulation for the Sádr Díwání Adálat or Provincial Courts which corresponds to the former of these two Regulations. Regulation V of 1793 for the Provincial Courts and Regulation VI of 1793 for the Sádr Díwání Adálat

The same rule is laid down for the Sádr Díwání in section 31, Regulation VI, and for the Provincial Courts in section 32, Regulation V of 1793. When the Registrars were empowered to decide cases by Regulation VIII of 1794, they were directed by section 5 of this Regulation "to be guided by the same rules as" were "prescribed for the trial of the suits before the Judge." Similarly, the Native Commissioners appointed under Regulation XL of 1793 were "to consider the principles laid down in the Regulation prescribed to the Zillah and City Courts for trying and deciding suits as the general rule for their rguidance."[1] These provisions were doubtless intended to make the two rules of substantive law applicable to the proceedings of the Registrars and Native Commissioners.[2]

§ 236.—When Regulation IV of 1793 was extended to the province of Benares by Regulation VIII of 1795, the following addition was by the latter Regulation made to the rule as to

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correspond to the latter. But section 11 of Regulation V of 1793, and section 7, Regulation VI of 1793, supply the deficiency by enacting that these Courts respectively shall, in trying original cases and appeals, "*proceed in the same manner and with the like powers and authority, and subject to the same restrictions, limitations and exceptions as are prescribed to the Zillah and City Courts.*" It is, of course, remarkable that a rule which is so plainly one of substantive law should be placed in the procedure Regulation, while the other rule of substantive law is placed in Regulation III, which relates to the constitution and jurisdiction of the Courts: but it is to be observed that Sir Elijah Impey's original Regulation included both rules, not indeed in juxtaposition, but still so placed that the one may be regarded as supplementary to the other, the rule as to justice, equity, and good conscience being found at the end, where it was evidently put so as to be supplementary to all the rules antecedently contained in the Regulation. It is noticeable that this rule is thrice expressly repeated in the Regulations of 1793 (see above), while the rule as to Hindú and Mahomadan law is repeated only by implication. Any argument based on the arrangement of the law of 1793 is worth little, as such arrangement is illogical and unscientific in many particulars. The draughting was not done by professional hands, being the work of Mr. George Barlow, a Civil Servant.

[1]Clause 11, section 9, Regulation XL of 1793.

[2]Yet when the jurisdiction of the Chittagong Munsifs was extended to petty suits, for land, although "the whole of the rules and provisions contained in Regulation XL of 1793" were made applicable to their proceedings, among the further "special rules" prescribed for their guidance was this that "in all cases of inheritance of, or succession to landed property, the Mahomadan laws with respect to Mahomadans, and the Hindú laws with regard to Hindús, are to regulate the decision." (*See* sections 4, 5, Regulation XVIII of 1797). If both rules had been

Hindú and Mahomadan law, *viz* :—"In causes in which the plaintiff shall be of a different religious persuasion from the defendant, the decision is to be regulated by the law of the religion of the latter ; excepting where Europeans or other persons, not being either Mahomadans or Hindús, shall be defendants, in which cases the law of the plaintiff is to be made the rule of decision in all plaints and actions of a civil nature."[1] The rule was, however, extended without this addition to the provinces ceded by the Nawáb Vizier.[2] The rules of justice, equity, and good conscience was also extended to these provinces without alteration[3]; and both rules were subsequently extended to the Conquered Provinces and Bundlekund.[4] In 1831, Munsifs were for the first time invested generally with power to try suits for real property by Regulation V of that year ; and it was provided that in all cases

otherwise extended, this would appear needless. If both rules had not been otherwise extended, then it is remarkable that, while part of that as to Hindú and Mahomadan law was enacted for Chittagong Munsifs in land suits, the rule as to justice, equity, and good conscience was not also enacted for their guidance in these cases ; and that, as by the hypothesis neither rule applied to all Munsifs in *other* cases, they were left without any rule of decision whatever. When the law relating to Munsifs and Sádr Amíns was consolidated and amended by Regulation XXIII of 1814, this point was in no respect cleared up—section 14 enacting generally that, in points not expressly provided for in that Regulation, they were to observe as nearly as practicable the rules prescribed in the Regulations for the guidance of the Zillah and City Courts in the trial and decision of civil suits—and section 59 repeating the "special rule" for Chittagong.

[1]Section 3, Regulation VIII of 1795.

[2]Expressly by section 16, Regulation III of 1803, for the Zillah and City Courts, and indirectly by section 7, Regulation V of 1803, for the Sádr Díwání Adálat ; by section 11, Regulation IV of 1803, for the Provincial Courts : and by clause 11, section 7, Regulation XVI of 1803, for the Munsifs.

[3]Expressly by section 30, Regulation V of 1803 for the Sádr Díwání Adálat; by section 24, Regulation IV of 1803 for the Provincial Courts; and by section 17, Regulation II of 1803 for the Zillah and City Courts; and indirectly for the Native Commissioners by clause 11, section 7, Regulation XVI of 1803, and clause 8, section 14, Regulation XLIX of 1803. The same indirect provisions extending both rules were re-enacted by section 14, Regulation XXIII of 1814, for Munsifs. The two rules were extended indirectly to the new Head Commissioners or Sádr Amíns by clause 7, section 26, Regulation XVI of 1803 , for the Ceded Provinces, and by clause 7, section 9, Regulation XLIX of 1803, for Bengal, Bahár, Orissa, and Benares, and again by section 74, Regulation XXIII of 1814.

[4]See the Chronological Table, second column, opposite the Regulations quoted in the last Note.

of inheritance of, or succession to, landed property, the Mahomadan laws with respect to Mahomadans, and the Hindú laws with regard to Hindús, were to regulate the decision—that in causes in which the plaintiff might be of a different religious persuasion from the defendant, the decision was to be regulated by the law of the latter, this rule being however limited to cases in which the defendant was either a Mahomadan or a Hindú[1]—that in cases in which the above rules could not be applied, the Munsifs were to act according to justice, equity, and good conscience.[2] It was also provided that the newly appointed Principal Sádr Amíns were to be guided in the trial of original suits and appeals by the rules established for the conduct of business in the Courts of the Sádr Amíns; and that, in points not expressly provided for by those rules, they were to observe as nearly as practicable the rules prescribed in the Regulations for the guidance of the Zillah and City Courts.[3]

§ 237.—Section 8, Regulation VII of 1832, repealed the abovementioned Benares rule,[4] and enacted that the rules contained in section 15, Regulation IV of 1793, and the corresponding enactment contained in clause first, section 16, Regulation III of 1803, should be the rule of guidance in all suits regarding succession, inheritance, marriage and caste, and all religious usages and institutions that might arise between persons professing the Hindú and Mahomadan persuasions respectively. The following section declared that the above rules were intended and should be held to apply to such persons only as were *bonâ fide* professors of

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[1]This was the Benares rule, limited and without the exception.

[2]Clauses 2 and 3 of section 6, Regulation V of 1831. Clause 1 rescinded the local rules for Chittagong, which were re-enacted in the following clauses, with additions for all districts. It may be remarked that section 14, Regulation XXIII, still remained in force for Munsifs. If its effect was to extend the double rule, then the above clauses of section 6 of Regulation V of 1831 were surplusage. No similar rules were provided for Sádr Amíns, who were still left to section 74 and for appeals to clause 3, section 75. Regulation XXIII of 1814—nor for Principal Sádr Amíns who were provided for as mentioned above.

[3]Clause 4, section 18, Regulation V of 1831. This is a peculiar provision, implying as it does, that there were rules applicable to the Zillah and City Courts which were not *expressly* provided for the Courts of the Sádr Amíns. Is there any peculiar force in "expressly"? But see the Preamble and section 2, Act XXVI of 1852.

[4]Contained in clause 2, section 3, Regulation VIII of 1795.

those religions at the time of the application of the law to the case, and were designed for the protection of the rights of such persons, not for the deprivation of the rights of others. Whenever, therefore, in any civil suit, the parties to such suit were of different persuasion, when one party was of the Hindú and the other of the Mohomadan persuasion, or where one or more of the parties to the suit were neither of the Mahomadan nor Hindú persuasion, the laws of those religions were not to be permitted to operate to deprive such party or parties of any property to which, but for the operation of such laws, they would have been entitled. In all such cases the decision was to be governed by the principles of justice, equity, and good conscience, it being clearly understood, however, that this provision was not to be considered as justifying the introduction of the English or any foreign law, or the application to such cases of any rules not sanctioned by those principles.[1] It

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[1] These provisions evidently amount to this. The special rule for Benares is repealed, and the rule contained in section 15, Regulation IV of 1793, is to be of general application. Then follows a general explanation of what was really intended by that rule, more specially with reference to a certain class of cases in which, while one party is a Hindú or Mahomadan, the other or others do not belong to either of these religions. To this class of cases, says the Legislature, it is not the rule of Hindú or Mahomadan law that is to be applied, but the *other rule* of justice, equity and good conscience—and then in the usual discursive style of the Regulations, the Legislature, taking advantage of the opportunity, goes on to explain how this rule of justice, equity and good conscience is to be understood and applied. Whether this explanation was intended to govern only the particular class of cases referred to in the section, or the general application of the rule, is a difficult and doubtful point. Further, it is not clear to what Courts the amended rules were intended to apply, and that a doubt subsequently arose as to their applicability to Munsifs' Courts appears from the sections being expressly extended thereto by section 3, Act XXVI of 1852. The following cases connected with this rule may be useful :—A Hindú sued for a declaration of his right to membership in a certain society (somaj). No question of *caste* within the meaning of section 8, Regulation VII of 1832, was involved. The effect of a decree would have been that other persons do accept plantiff's invitations and do partake of his food though against their will, and that they in their turn must give him similar invitations and dine with him whether they liked to do so or not. The Court, after considering all the previous cases, held that such an action would not lie, that the members of such a society (as of a club in England mainly for social purposes) are the sole judges whether a particular individual is entitled to continue to be a member or not—*Satharam Patar* v. *Sadharam and others*, III B. L. R. Civ. Ap. 91.—A Hindú was outcasted for cohabiting with a Mahomadan girl. It was contended that he was in consequence debarred from inheriting. Act

was enacted by section 1 of Act VI of 1843[1] that in the trial and decision of all original suits referred to them by the Judge, the Principal Sádr Amíns shall be guided by the rules established for the conduct of business in the Courts of the Zillah and City Judges.

§ 238.—Act XXI of 1850, reciting the provisions of section 9, Regulation VII of 1832, and declaring that it would be beneficial to extend the principle of that enactment throughout the territories, subject to the Government of the East India Company, enacted that so much of any law or usage then in force within the said territories as inflicted on any person forfeiture

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XXI of 1850 and section 9 of Regulation VII of 1832 having effect merely when deprivation of caste is in consequence of renunciation of religion, or excommunication from religion. It was decided that this contention was bad, and that exclusion from inheritance could not result from exclusion from caste for any cause whatever—*Bhujjan Lal and others* v. *Gya Persad and others*, II N.-W. P. H. C. R. 446. A Hindú widow, outcasted for unchastity, would not in consequence forfeit her husband's property which had once vested in her—*Srimati Matangini Debya* v. *Srimati Jai Kali Debya*, V. B. L. R. 466; *Keri Kolitani* v. *Maniram Kolita*, XIII B. L. R. 1. In the case of *Sheikh Kudratulla* v. *Mahini Mohun Saha*, the following question was referred to a Full Bench :— "Whether a Mahomadan, who sues to enforce the right of pre-emption which he would have had in respect of property by reason of vicinage or co-partnership, if such property had been conveyed by the vendor to a Mahomadan, is debarred from enforcing such right, where the purchaser is other than a Mahomadan." In the case of *Sayama Kumar Rai and others* v. *Jan Mahomed and others*, the following question was referred :—"Whether, when the plaintiff claiming pre-emption and the vendor are both Mahomadans, the Mahomadan law of pre-emption does not apply." In the case of *Farman Khan* v. *Bharat Chandra Saha Chaudhuri*, the following question was referred :— "Where no local custom exists with regard to pre-emption amongst Hindús, can a Mahomadan pre-emptor be deprived of his right of pre-emption as against a Mahomadan vendor, because that vendor chooses to sell to a Hindú". The three references were argued before and decided by the same Full Bench, IV B. L. R. Full Bench Rule 134. A majority of the Judges held that the right of pre-emption does not depend on any defect of title on the part of the Mahomadan co-partner to sell except subject to the right of pre-emption, but upon a rule of Mahomadan law, which is not binding on the Court, nor on any purchaser other than a Mahomadan ; that, therefore, a Hindú purchaser is not bound by the Mahomadan law of pre-emption in favour of a Mahomadan co-partner, although he purchased from one of several Mahomadan coparceners; nor is he bound by the Mahomadan law of pre-emption on the ground of vicinage.

[1]In modification of clause 4, section 18, Regulation V of 1831, which directed the rules for the conduct of business in the Courts of the Sádr Amíns to be followed.

of rights or property, or might be held in any way to impair or affect any right of inheritance by reason of his or her renouncing or having been excluded from the communion of any religion, or being deprived of caste, should cease to be enforced as law in the Courts of the East India Company and in the Courts established by Royal Charter within the said territories. Act XXVI of 1852, reciting the desirability of assimilating the mode of procedure in original suits in the Courts of Sádr Amíns and Munsifs to the procedure in such suits in the Courts of the Judges and Principal Sádr Amíns, enacted that all laws and rules of procedure for the trial and decision of original civil suits in the Courts of the Judges and Principal Sádr Amíns should apply to and regulate the procedure in the trial and decision of similar suits in the Courts of the Sádr Amíns and Munsifs.[1] It further declared sections 8 and 9, Regulation VII of 1832, as extended by Act of 1850, to be applicable to suits and cases in the XXI Courts of the Munsifs.[2]

§ 239.—Finally, one general rule was laid down for all Civil Courts in the territories under the Government of Lieutenant-Governors of the Lower and North-Western Provinces by section 24 of Act VI of 1871, which enacts as follows :—"Where, in any suit or proceeding it is necessary for any Court under this Act to decide any question regarding succession, inheritance,

[1]Section 2.

[2]This taken with the context shows that there was no doubt as to these provisions being applicable to the Courts of Principal Sádr Amíns and Sádr Amíns. Was this effected for the former by section 1, Act VI of 1843, which would appear to refer to procedure only? It may be observed that it is in the Procedure Regulation IV of 1793, that the substantive rule as to Hindú and Mahomadan law was placed. It was doubtless effected for the latter by section 74 of Regulation XXIII of 1814, which remained in force until repealed by Act X of 1861 ; but this section speaks of rules "*for guidance in the trial and decision, &c.,*" while section 1, Act VI of 1843 speaks of "*rules for the conduct of business*" merely. Then as to Munsifs, section 14, Regulation XXIII of 1814, was in force—it remained in force until repealed by Act X of 1861. If it was sufficient to extend the two-fold rule, then whence arose the doubt, to settle which section 3 of Act XXVI or 1852 was passed? Was the doubt created by clauses 2 and 3, section 6, Regulation V of 1831? Or was it to due sections 8 and 9, Regulation VII of 1832, being passed after section 14, Regulation XXIII of 1814 ? If the latter, then there ought to have been the same doubt as to Sádr Amíns, who were governed by another section of the same Regulation. If we reject the effect of these and similar sections as extending the two rules of substantive law, then the Subordinate Civil Courts were for years without any such rule whatever. The effect of some of these sections will be found discussed in *The Secretary of State* v. *The Administrator-General of Bengal*, I. B. L. R. Or. Civ. 92.

marriage, or caste, or any religious usage or institution, the Mahomadan law in cases where the parties are Mahomadans, and the Hindú law in cases where the parties are Hindús, shall form the rule of decision, except in so far as such law has, by legislative enactment, been altered or abolished. In cases not provided for by the former part of this section, or by any other law for the time being in force, the Court shall act according to justice, equity, and good conscience." The substantive law administered in the Civil Court may then be divided into three parts, *viz*:—I. Hindú and Mahomadan law in certain cases. II. Legislative enactment. III. The rule of justice, equity, and good conscience. Large portions[1] have been, within the last few years, transferred from the domain of No. III to that of No. II. Further transfers are contemplated, and ultimately in all probability the whole or nearly the whole of the third part will be absorbed in the second part.

§ 240.—The substantive law of the Criminal Courts for a long time consisted of the Mahomadan law, with such modifications as rendered it in some respect conformable to our ideas of punishment as a satisfaction for, and a deterrent from, crime. These modifications were numerous and important, and were scattered over a large number of Regulations and Acts.[2]

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[1] "The Indian Contract Act, IX of 1872". "The Indian Companies Act, X of 1866." "The Indian Succession Act, X of 1865," &c., &c.

[2] They were repealed by, and will be found in Act XVII of 1862. No benefit could result from recapitulating and discussing these enactments; but the provisions of a few of them may be noticed. Slavery was abolished by 3 and 4 Wm. IV. cap. 85, section 88, and Act V of 1843. The exemption of Bramins in Benares from capital punishment was abolished by section 15, Regulation XVII of 1817. The punishment of *tashhir*, or carrying a delinquent through the town on an ass with his face blackened, was abolished by Act II of 1849. The punishment of *godna*, or branding, was abolished by the same Act. The words "Daroghgo" or "perjurer" was directed by section 3, Regulation XVII of 1797, to be branded on the foreheads of those convicted of wilful and corrupt perjury. The use of the kora, or scourge, was forbidden, and the rattan substituted therefor by section 4, Regulation XII of 1825. Females were exempted from flogging by section 3 of the same Regulation. The sacrifice of children at Saugor was prohibited by Regulation VI of 1802. Gold and silver-smiths, braziers and blacksmiths, were required by Regulation I of 1811 to take out a license, and were bound by its terms not to buy gold or silver ornaments from suspicious persons, not to melt down ornaments or plate, not to make house-breaking implements, false keys or picklocks, &c. As to murder and mutilation, see *ante*, § 196. The Law officers who expounded the Mahomadan law were abolished by Act XI of 1864.

Difficult to learn, and not in all places easy to understand without risk of error, this criminal law was superseded in 1860 by "The Indian Penal Code," Act XLV of that year, which has been now fifteen years in operation, and has more than justified the expectations of its eminent compilers. During this period it has been found necessary to amend the Code in a few particulars only (see Acts IV of 1867 and XXVII of 1870), and its working has been in all respects most satisfactory. The Penal Code, together with a few special and local laws, comprehend the whole of the substantive law administered in the Criminal Courts.

§ 241.—Turning to adjective law and taking the Civil Courts first in order, we find that before 1859, such rules as existed for the procedure of these Courts were to be collected only by diligent study from a number of Regulation and Acts, many of which contained provisions on other and different subjects, and nearly all of which had been more or less obscured by partial repeals and amendments. In 1859 these fragmentary rules were gathered together and reduced to some shape and order in Act VIII of that year, which is entitled "*An Act for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter.*" This Act was amended and styled "The Code of Civil Procedure" by Act XXIII of 1861; and was further amended by several later Acts passed from time to time, as occasion required. It was originally rather an attempt to reduce to order the previously existing scattered rules without making any great changes, than a systematic Code providing completely for the subject with which it dealt. The experience of sixteen years has disclosed many imperfections and omissions, and the original Act is now overlaid with a considerable quantity of case-law. A Bill is, however, before the Legislature for amending and consolidating this branch of the law, and India will doubtless ere long have a Code of Civil Procedure worthy to rank with her other Codes.[1]

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[1]It is to be regretted, I think, that there is no machinery in India to work new material into the Codes during the intervals between those periodical revisions to which the Codes are subjected. The necessity for a Standing Law Commission for this purpose was one of Austin's ideas for codification. Under the Prussian system, if the Judges, whose duty it is to decide according to the provisions of the Code, differ in their interpretation of it, and cannot unravel the meaning, the decision of the last Court of appeal is referred to the Law Commission, who have power not to alter the decision as respects the particular case, but to

§ 242.—One of the most remarkable features of Indian Procedure is the great latitude of appeal which it has always permitted. This has generally been considered the only possible remedy for the defects of a system, under which the administration of Justice has been conducted by untrained Judges, without the assistance of anything deserving the name of a Bar, and in a country where the checks afforded in England by public opinion and, that which is at the same time its leader, and exponent, a Public Press, are almost unknown[1]. Some account of the Law of Appeal will therefore be useful in connection with the present subject. Finality was given to the decisions of none of the Courts established in 1793 except certain decisions of the Provincial Courts. With this exception an appeal lay in all cases from decisions passed in original cases by the inferior Courts to the Courts immediately above them. The decisions of the Native Commissioners were appealable to the Zillah and City Judges :[2] the decisions of the Zillah and City Judges were appealable to the Provincial Courts.[3] The decisions of the Provincial Courts were appealable to the Sádr Díwání Adálat in all cases in which the decree was for land or other real property being *lakhiráj*, the annual produce of which exceeded *one hundred sicca* rupees ; or for any zemindári, independent *talúk*, or other landed estate being *malguzári*, or for any dependent *talúk* of which the annual produce exceeded *one thousand sicca* rupees ; and in all other cases, where the decree was for a sum of money or personal property or real property, the amount or value of

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amend the law *in futurum*, and what they promulge is a law declaratory of what shall be deemed law in future on the occurrence of a similar case. It so happened, indeed, that what the Commissioners made law in this way came to exceed the Code many times in bulk ; but this, as Austin points out, was mainly due to the original bad construction of the Code, and to the neglect of the Government in not re-modelling it from time to time and inserting the amendments which had been suggested by experience. (Lecture XXXIX.)

[1]The reader will find these topics well discussed from an original point of view in the *Minute on the Administration of Justice in British India*, written by Mr. J. Fritzjames Stephen, the late Law member of the Supreme Council. Much has been said here and elsewhere of the latitude of appeal and of the litigiousness of the people of India: but I venture to say that a careful comparison of the Indian system and of judicial statistics will show that there is very little, if indeed anything, abnormal in these respects in India, as compared with other countries.

[2]Section 20, Regulation XL of 1793.

[3]Section 20, Regulation III of 1793, and section 12 of Regulation V of 1793.

which exceeded *one thousand sicca* rupees. In all other cases the decisions of the Provincial Courts, whether in original cases or an appeal were final.[1] Under this system there was but one appeal in all cases decided by the Native Commissioners, and in all cases decided by the Zillah and City Judges, which did not exceed the limits of value just mentioned. In cases which exceeded those limits, there was a second appeal to the Sádr Díwání Adálat, and this second appeal was an appeal upon the whole case, and was heard with the like powers and authority, as the first appeal by the Provincial Court, or the original case by the Zillah or City Court.[2]

§ 243.—Four years afterwards, the decrees of the Provincial Courts for money or personal property were made final up to five thousand sicca rupees (Regulation XII of 1797), and in the following year finality was given to decrees of the same Court for *malguzári* land, the annual value of which did not exceed *five thousand sicca* rupees; for *lakhiráj* land, the annual value of which did not exceed *five hundred sicca* rupees; and for other real property not exceeding *five thousand sicca* rupees in value (Regulation V of 1798). The number of cases in which a second appeal was possible was largely diminished in consequence of the appealable limit being thus raised. The number not only of second appeals, but of all appeals to the Sádr Díwání Adálat and Provincial Courts must also have been considerably diminished by a provision made in 1796 (Regulation XIII), which empowered these tribunals to punish appeals, which appeared to them litigious, by a fine to Government proportionate to the condition of the party and the circumstances of the case.

§ 244.—In 1801, it was enacted that when a Provincial Court had refused to admit an appeal from the decision of a Zillah or City Court on the ground of delay, informality or other default in preferring it; or, having admitted, dismissed an appeal on the ground of some default without investigation of the merits, it should be competent to the Sádr Díwání Adálat to receive an appeal from the order of dismissal of the Provincial Court, whatever might be the amount or value at issue in the cause; and, if it appeared, on examination of the proceedings of the Provincial Court that the appeal had been

[1]Section 9 of Regulation V of 1793, and section 10 of Regulation VI of 1793.

[2]Section 7 of Regulation VI of 1793.

rejected or dismissed on insufficient grounds, it might order the Provincial Court to receive or revive it, and to try and determine the cause upon its merits. The Provincial Courts were invested with similar powers as towards the Zillah and City Courts and in regard of appeals from the Registrars and Native Commissioners.[1] The authority thus vested in the Provincial Courts was subsequently extended to original suits, which the Zillah or City Courts had refused to admit on the ground of delay, informality or other default in preferring them ; or, having admitted, dismissed on the ground of some default without investigation of the merits.[2] If any of these appeals was on inquiry found groundless or litigious, the litigious appellant might be punished by a fine to Government proportionate to the condition of the party and the circumstances of the case. As the appeal in these cases was not upon the merits of the cause, but merely on the default which was made the ground for rejecting or dismissing the previous appeal, and which necessarily appeared upon the proceedings of the Court by which such appeal had been rejected or dismissed, it was provided that it was not requisite to hold the regular pleadings upon such appeals, or to hold any other than summary proceedings thereupon, such as might appear sufficient on consideration of the stated ground for rejecting or dismissing the previous appeal.[3] These provisions as to summary appeals were amended and consolidated in 1814 ; and were extended to Zillah and City Judges in respect of cases dismissed by Registrars and Sádr Amíns on the ground of some default and without an investigation of the merits.[4] They were further extended in 1838 to the same Judges in respect of cases dismissed by Munsifs on similar grounds.[5]

§ 245.—By the provisions of Regulation XLIX of 1803, the decrees of Zillah and City Judges passed on appeal from their Registrars were declared final in suits for *malguzári* land, the annual produce of which did not exceed one hundred sicca

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[1]Sections 8 and 9 of Regulation II of 1801 ; clause 12, section 12 of Regulation IV of 1803.

[2]Section 11 of Regulation II of 1805. A *summary* appeal was, after this, not necessarily a *second* appeal.

[3]Clause 2, section 26, Regulation XLIX of 1803.

[4]Section 3 of Regulation XXVI of 1814, which remained in force until repealed by Act X of 1861.

[5]Act XXII of 1838, which remained in force until repealed by Act X of 1861.

rupees for *lakhiráj* land, the annual produce of which did not exceed ten sicca rupees; and for other real property or for personal property the value of which did not exceed one hundred sicca rupees. Above these limits, the Judge's decree was final, if it *confirmed* the decision of the Registrar: if it *reversed* or *altered* such decree, a further appeal lay to the Provincial Court.[1] In the former class of cases, or cases above the limits, *affirmed* on appeal, the Provincial Court might however admit a special appeal under the provisions to which we now come. Clause 1, section 24, Regulation XLIX of 1803[2]—reciting that suits tried in the first instance by the Native Commissioners or by the Registrars may occasionally involve questions of a general and important nature, particularly in causes between land-holders or farmers, of land, and the *raiyats* for arrears or exactions of rent, wherein the rights of the landlord and tenant may be at issue, and an erroneous decision not revocable by appeal may be of serious ill consequence—enacted that in all cases, in which a regular appeal did not lie to the Provincial Courts from the decrees of the Zillah and City Courts, it should be competent to the Provincial Courts to admit a *Special Appeal*, if on the face of the decree of the Zillah or City Judge, or from any information before the Provincial Court, it appeared to be erroneous or unjust; or if, from the nature of the cause, as stated in the decree, or otherwise, it appeared to be of sufficient importance to merit a further investigation in appeal. The following clause directed that the discretionary authority so vested in the Provincial Courts was to be used with caution, and was not to be considered to entitle any party to demand of right an appeal in cases wherein the judgments of the Zillah and City Courts were provisionably made final. The Sádr Díwání Adálat was subsequently vested with like powers of admitting special appeals from the decrees of the Provincial Courts.[3]

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[1]Clauses 2 and 3, section 8, Regulation XLIX of 1803. The *Civil Appeal's Bill* now before the Council proposes to revive this principle of finality where two Courts concur.

[2]This Regulation applied only to Bengal, Bihar, Orissa and Benares. See for the Ceded and Conquered Provinces, clauses 1—4, section 9, Regulation VIII of 1805.

[3]Section 10 of Regulation II of 1805, and clause 3, section 5, of Regulation XXV of 1814. See further, as to the Provincial Courts, clause 4, section 3, Regulation XXV of 1814.

§ 246.—These provisions were subsequently modified by clause 1, section 2, Regulation XXVI of 1814, which enacted that no *Special or second appeal* should be admitted by a Zillah or City Judge, by a Provincial Court or by the Sádr Díwání Adálat unless upon the face of the decree or documents exhibited with it (assuming all the facts of the case as stated in the decree) the judgment appeared to be *inconsistent with some established judicial precedent,*[1] *or with some Regulation in force, or with the Hindú or Mahomadan law in cases required to be decided by those laws or with some other law or usage applicable to the case, or unless the judgment involved some point of general interest or importance not before decided by the Superior Courts.* The Sádr Díwání Adálat and Provincial Courts were subsequently empowered to admit a second special appeal whenever on a perusal of the decree of the Lower Court, from whose decision the special appeal was desired there *appeared strong probable ground, from whatever cause, to presume a failure of justice.*[2] It was soon, however, found that this rule was far too indefinite in its terms, and as the result, the Sádr Díwání Adálat and Provincial Courts were overwhelmed with applications for the admission of special appeals, which, "whether ultimately rejected or admitted, occupied more time than could be applied to them without impeding the trial and decision of other more important cases." The rule was therefore repealed a few years after.[3] The Zillah and City Judges were declared competent in cases in which there was no further regular appeal, but in which either of the parties was desirous of a further appeal, to certify to the Provincial Court that such case involve some point of general importance apparently unsettled and fit to be reconsidered in a further appeal. The Provincial Courts were also declared competent to certify appeals in a similar manner to the Sádr Díwání Adálat.[4] As a check on the admission of second or special appeals, it was at the same time

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[1]This was explained and a special appeal allowed when the judgment appealed against appeared to be in opposition to, or inconsistent with another decree of the same Court or of another Court having jurisdiction in the same suit, or in a suit founded on a similar cause of action. In these cases the Court might try the merits of the case or might refer it back for revision and a further judgment either by the lower appellate or by the original Court—section 7 of Regulation XIX of 1819.

[2]Clause 2, section 2, Regulation IX of 1819.

[3]By clause 1, section 4 of Regulation II of 1825.

[4]Clauses 1 and 2, section 3 of Regulation IX of 1819.

enacted that no such appeal should be admitted unless two Judges concurred in the propriety of its admission.[1]

§ 247.—The next important enactment was Act III of 1843, which provided that a special appeal should lie to the Sádr Díwání Adálat from all decisions passed in regular appeal which appeared to be *inconsistent with some law or usage having the force of law, or some practice of the Courts, or involve some question of*[2] *law, usage or practice, upon which there might be reasonable doubts.* Parties were not, however, allowed to file special appeals as a matter of course and right. They had in the first place to apply for leave. Such applications were heard by a single Judge, who might, at his discretion, call for and peruse any document forming part of the record, and summon the opposite party to answer the application. If it appeared to the Judge that a special appeal was admissible on any of the points allowed by law, he was to pass an order accordingly, and at the same time reduce the point or points to writing in English in the form of a certificate.[3] At the hearing of the special appeal, the Sádr Díwání Adálat was to determine the point or points so certified, *and no other point or part of the case whatever.* When the special ground of appeal was incorrectly or incompletely certified, the Court might, however, amend the certificate, but only on the points originally stated therein it not being allowable for the Court to receive or add any new point.[4]

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[1]Section 5 of Regulation IX of 1819.

[2]Clause 1, section 2, Regulation XXVI of 1814, was left unrepealed; and so far as it was consistent with Acts III of 1843 and XVI of 1853, (see section 9 of the former, and section 11 of the latter) remained in force until repealed by Act X of 1861. The result was that a case involving some point of general interest or importance (of law or fact or mixed law and fact) might be brought before the highest tribunal. This appears to have escaped the framers of the Civil Procedure Code of 1859, section 372 of which merely repeats the provisions of Act III of 1843. If these or similar words had been inserted in that section, the result of the action of the High Court under the Special Appeal Law would have been very different. It may be that the framers of the Code intended clause 1, section 2, Regulation XXVI of 1814, to remain in force, and that the oversight was, on the part of the framers of the repealing Act, X of 1861. But the words "*and on no other ground*" with which section 372 closes, may well support the subsequent express repeal.

[3]This was the stating of a case neither by the parties, nor by the Judge who originally tried the suit, nor by the Court who was to determine the case stated.

[4]Sections 4—8, Act III of 1843.

§ 248.—Act III of 1843 was repealed by Act XVI of 1853 which allowed a special appeal on the following grounds: (1) that the decision had failed to determine all material points in difference in the cause, or had determined the same or any of them contrary to law or usage having the force of law: (2) on the ground of the misconstruction of any document; (3) on the ground of any ambiguity in the decision affecting the merits; (4) on the ground of any substantial error or defect in procedure or in the investigation of the case, provided such error or defect were apparent on the record and had produced or was likely to have produced some error or defect in the decision of the case upon the merits. No special appeal was, however, to lie, nor was any decision to be reversed, altered, or remanded upon the ground that the decision of any question of fact was contrary to or not warranted by the evidence duly taken in the cause, or any probability deduced from the record. Applications for the admission of special appeals were to be heard by one or more Judges. If any application were heard by two Judges who differed in opinion as to admitting the appeal for hearing, it was to be admitted. If heard by one Judge, who was for rejecting it, the application was to be laid before a second Judge and was to be admitted or rejected according to his opinion. Every order for admitting a special appeal was to specify, for the information of the Court, the grounds upon which it had been admitted; but neither the Court, nor the parties were to be confined to those grounds at the hearing. Any Judge admitting a special appeal might certify that in his judgment the decision of the Lower Court was manifestly erroneous upon any of the grounds upon which a special appeal would lie. Cases so certified were to be entered in a *List of Certified Special Appeals*, and were brought on for hearing without regard to the general list of special appeals. Special appeals when admitted were to be heard by three or more of the Judges of the Sádr Court.

§ 249.—The provisions of the Code of Civil Procedure as to special appeals are as follows:—"Unless otherwise provided by any law for the time being in force, a special appeal shall lie to the Sádr (now High Court) from all decisions passed in regular appeal by the Courts subordinate to the Sádr Court, on the ground of the decision being contrary to some law or usage having the force of law, or of a substantial error or defect in law in the procedure or investigation of the case which may

have produced error or defect in the decision of the case upon the merits and on no other grounds." The last five words of this section and the express repeal of the Old Regulations, which dealt with the subject, had the effect of converting the old special appeals into partial appeals upon points of law only, as distinguished from questions of fact, thus making a division between things which in practice cannot be divided.[1] The result has been, in the opinion of all, eminently unsatisfactory :[2] and the Legislature is at present engaged upon the difficult work of reforming the system of appeal.[3]

§ 250.—District Judges have a Probate jurisdiction under *The Indian Succession Act*, X of 1865, which contains provisions as to the practice to be observed in granting and revoking probates and letters of administration, and directs

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[1]They are inconvenient on many accounts, but in particular because they involve a division between things which in practice cannot be divided, and which none but a technically educated mind can distinguish. *Mr. J. Fitzjames Stephen's Minute on the Administration of Justice in India*, p. 50.

[2]See the opinions quoted and the mischief described in *Mr. Stephen's Minute on the Administration of Justice in India*, pp. 74—79, and in the *Proceedings of the Council of the Governor-General of India assembled for the purpose of making Laws and Regulations*, p. 1220, *Supplement to the Gazette of India of June 27th*, 1874, p. 1251, *idem of July 11th*, 1874: and p. 1871, *idem of November 28th*, 1874.

[3]There are two points connected with the subject of appeal which may be noticed to complete the above sketch. Act IX of 1854 enacted that no order or decision of any of the Civil Courts should be reversed, altered or remanded on account of any error, defect or irregularity not productive of injury to either party. This provision has been incorporated in section 350 of Act VIII of 1859. Under the provisions of clause 3, section 16, Regulation V of 1831, as amended by Act VIII of 1850 (which also extended its provisions to Principal Sádr Amíns) it was declared unnecessary to serve any process upon the respondent in the first instance and if, after a perusal of the record of the original suit and the petition of appeal, the Judge saw no reason to alter the decision appealed from, he might confirm it and reject the appeal; but he was bound to record his reasons for so doing. This provision is not to be found in the existing Code of Civil Procedure, though there is a corresponding provision in the Code of Criminal Procedure.

that proceedings therein are, as far as practicable, to be regulated by the Code of Civil Procedure. They have a jurisdiction in Divorce and Matrimonial causes under *The Indian Divorce Act*, IV of 1869, which also directs that proceedings thereunder be regulated by the Code of Civil Procedure. *The Indian Companies Act*, X of 1866, contains certain rules of procedure and empowers the High Court to make further rules consistent with the Act itself and with the Code of Civil Procedure. The Law of Limitation applicable to the Civil and Criminal Courts has been codified with the greatest care in Act IX of 1871, which in a schedule of 169 articles appoints the period of limitation for all suits, appeals and applications which can be made to the Courts. The Courts, both Civil and Criminal, were for a long time unprovided with any proper rules of evidence. The Mahomadan law of evidence did not govern their proceedings:[1] and an Act (II of 1855) passed "for the further improvement of the law of evidence" introduced a certain amount of difficulty, inasmuch as it assumed the English rules of evidence to be in force in the Mofussil Courts, which was not actually the case save in so far as they had been adopted as a source of guidance where the Legislature had not laid down any authoritative rule. At length, however, a Code of Evidence was drawn up and passed into law (Act I of 1872) under the auspices of Mr. J. Fitzjames Stephen. The provisions of this Code apply to both civil and criminal proceedings. In the year after the passing of the Penal Code, a Code of Criminal Procedure (Act XXV of 1861) was enacted for the Court of Criminal Judicature not established by Royal Charter. After eleven years' successful working, this Code was amended and re-enacted in an improved form in Act X of 1872 which "consolidates and amends the law regulating the procedure of the Courts of Criminal Judicature other than the High Courts in Presidency towns in the exercise of their original criminal jurisdiction,[2] and the Courts of Police Magistrates[3] in such towns.

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[1] *Mir. Khedmath Ali* V. *Musamat Nasiranissa*, II Sev. 449.

[2] Now regulated by *the High Courts Criminal Procedure Act*, X of 1875.

[3] See Acts XIII of 1856, XVIII of 1859, LII of 1860, and XXI of 1864.

§ 251.—In conclusion, the Courts (other than Revenue Courts) in the Regulation[1] Districts of the Bengal Presidency may be thus exhibited:—

| CIVIL COURTS. | CRIMINAL COURTS. |
|---|---|
| I.—High Court[2] (Original[3] and Appellate[5] Jurisdiction). | I.—High Court[2] (Original[4] and Appellate[6] Jurisdiction).* |
| II.—Court of District Judge[7] (Original[8] and Appellate[9] Jurisdiction). | II.—Court of Session (Original[13] and Appellate[14] Jurisdiction). |
| III.—Court of Subordinate Judge[7] (Original[8] and Appellate[10] Jurisdiction). | III.—Magistrate of the District[17] (Original[15] and Appellate[16] Jurisdiction). |
| IV.—Court of Munsif[7] (Original[11] Jurisdiction only). | IV.—Magistrate of a Division of a District[18] (Original[15] Jurisdiction only). |
| V.—Courts of Small Causes (Original[12] Jurisdiction only). | V.—Magistrate of the First Class[19] (Original[15] Jurisdiction only). |
| | VI.—Magistrate of the Second Class[20] (Original[15] Jurisdiction only). |
| | VII.—Magistrate of the Third Class[21] (Original[15] Jurisdiction only). |
| *N.B.*—Nos. I and II are presided over by the same functionaries who preside over Criminal Courts Nos. I and II. Nos. III, IV, and V have no Criminal Jurisdiction. | *N.B.*—Nos. III, IV, V, VI, and VII have no Civil Jurisdiction; but have Revenue Jurisdiction, as Collectors, or Deputy or Assistant Collectors. |

[1]The Courts in some of the Non-Regulation Districts are similar to those in the Regulation Districts. In other places they are regulated by Special Acts, for which see the Author's *Chronological Table of and Index to the Indian Statute-book*, TITLES to Civil Courts, Criminal Courts.

[2]For constitution, procedure, etc., see 24 & 25 Vict. cap. 104, Letters Patent of (1862 repealed and) 1865 for Calcutta High Court, and Letters Patent of 1866 for North-Western Provinces High Court. In the Panjab there is not a High Court, but a Chief Court, constituted by an Act of the Indian Legislature.

*Now regulated by the High Court's Criminal Procedure Act, X of 1875.

[3]Ordinary, for the local limits of Calcutta ; Extraordinary, without those limits—in the case of the Calcutta High Court. The N.-W. P. High Court has no ordinary original civil jurisdiction, but has an extraordinary original civil jurisdiction for the districts—See *Letters Patent.*

[4]The Calcutta Court has an ordinary original criminal jurisdiction in respect of Europeans and natives for offences committed within the limits of Calcutta, and in respect of European British subjects for offences committed outside the limits of Calcutta ; and an extraordinary original criminal jurisdiction over all persons residing in places within the jurisdiction of any Court subject to its superintendence. The N.-W. P. High Court has an ordinary original criminal jurisdiction over European British subjects in the N.-W. Provinces ; and an extraordinary original criminal jurisdiction over all persons residing in places within the jurisdiction of any Court formerly subject to the superintendence of the Nizámat Adálat—see *Letters Patent.*

[5]From Civil Courts, Nos. II and III. The High Court, in the exercise of its appellate jurisdiction, is to apply such *law or equity and rule of good conscience* as the Court in which the proceedings were originally instituted ought to have applied—see *Letters Patent.*

[6]From Criminal Court No. II. The High Court has, moreover, large power of supervision over all Sessions Judges and Magistrates.

[7]For the jurisdiction of Civil Courts, Nos. II, III, and IV, see *The Bengal Civil Courts Act,* IV of 1871. An Additional Judge when appointed to aid the District Judge performs such duties as the District Judge assigns to him.

[8]In suits up to any amount or value—see Act VI of 1871.

[9]From Civil Courts, Nos. III and IV. From No. III in cases not exceeding Rs. 5,000 in value, *id.*

[10]In appeals from Civil Court, No. IV, referred for hearing by the District Judge, *id.*

[11]In suits up to Rs. 1,000 in amount or value, *id.*

[12]In claims for money due on bond or other contract, or for rent, or for personal property, or for the value of such property, or for damages, when the debt, damage or demand does not exceed Rs. 500, extendible by the Local Government to Rs. 1,000—See Act XI of 1865.

[13]In all more serious offences, and upon commitment by Magistrates. The offences are specified in column 7, Schedule V of *The Code of Criminal Procedure,* Act X of 1872. The Sessions Judge or Additional Sessions Judge sits in the Court of Session, which can inflict any punishment authorized by law ; but sentences of death must be confirmed by the High Court before being carried in effect. The Court of Sessions sits with Assessors, and in cases in which it has been so directed by Government with a jury.

[14]From Criminal Courts, Nos. III and V, and generally from No. IV.

[15]In offences as specified in column 7, Schedule V of *The Code of Criminal Procedure,* Act X of 1872.

[16]In appeals from Criminal Courts, Nos. VI and VII.

[17]The Magistrate of the District always, and the Magistrate of a Division of a District generally, is a Magistrate of the first class. See for the powers of the Magistrate of the District, sections 335, 8, 41, 44, 9, 47, and 46 of *The Code of Criminal Procedure.*

[18]See sections 22, 28, 29, and 40, *id.*

[19]May sentence to imprisonment not exceeding two years, to fine not exceeding one thousand rupees and to whipping. For other powers, see sections 22, 26, and 27, *id.*

[20]May sentence to imprisonment not exceeding six months, to fine not exceeding two hundred rupees and to whipping. For other powers, see sections 22, 24, and 25, *id.*

[21]May sentence to imprisonment not exceeding one month and to fine not exceeding fifty rupees. For other powers, see sections 22 and 23, *id.*

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